

706
702
No. 2054

United States
Circuit Court of Appeals
For the Ninth Circuit.

CHARLES A. HICKENLOOPER,

Appellant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVEST-
MENT COMPANY, LIMITED, a Corporation, and
W. J. D'ARCY, Receiver of the Said THE
CRYSTAL SPRINGS INVESTMENT COMPANY,
LIMITED, a Corporation,

Appellees.

Transcript of Record.

Upon Appeal from the United States Circuit Court for the
District of Idaho.

FILED

JAN 12 1912

Records of U. S. Circuit
Court by appends
706

No. 2054

United States
Circuit Court of Appeals
For the Ninth Circuit.

CHARLES A. HICKENLOOPER,

Appellant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED, a Corporation, and
W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED, a Corporation,

Appellees.

Transcript of Record.

Upon Appeal from the United States Circuit Court for the
District of Idaho.

INDEX OF PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Acknowledgment of Service of Replications.	47
Affidavit of J. T. Danilson Re Service of Sub- poena	29
Affidavit of Charles A. Hickenlooper on Applica- tion for Order Appointing J. T. Danilson to Serve Subpoenas	25
Answer of T. H. Christy.	32
Answer of W. J. D'Arcy, Receiver.	38
Appearance of T. H. Christy.	30
Appearance of W. J. D'Arcy, Receiver.	31
Assignment of Errors.	152
Attorneys of Record, Names and Addresses of. . .	1
Bill of Complaint.	1
Bond on Appeal.	155
Citation	158
Clerk's Certificate.	160
Complaint, Bill of.	1
Decree	54
Examiner's Certificate to Testimony.	151

	Index.	Page
EXHIBITS:		
Exhibit "A" to Complaint (Promissory Note Secured by Real Estate Mortgage Dated July 8, 1907, from Thomas G. Clegg and Rachel A. Clegg to S. J. Rich).....		11
Exhibit "B" to Complaint (Real Estate Mortgage Dated June 8, 1907, from Thomas G. Clegg and Rachel A. Clegg to S. J. Rich).....		12
Exhibit "C" to Complaint (Real Estate Mortgage Dated September 25, 1908, from the Crystal Springs Investment Company, Limited, to Thomas G. Clegg)		14
Exhibit "D" to Complaint (Petition in Cause Entitled A. G. Robert et al. vs. Crystal Springs Investment Company, Limited, et al.).....		19
Exhibit "E" to Complaint (Order).....		22
Memorandum Opinion		49
Names and Addresses of Attorneys of Record..		1
Opinion, Memorandum.....		49
Order Appointing J. T. Danilson to Serve Subpoenas		26
Order Enlarging Time to Docket Cause.....		162
Petition on Appeal.....		154
Replication to Answer of T. H. Christy.....		44
Replication to Answer of W. J. D'Arcy, Receiver		45
Return to Record		159

Index.	Page
Stipulation for Appointment of Daniel Hamer, as Special Examiner.....	43
Stipulation That Testimony be Taken Before Special Examiner.....	55
Stipulation to Transfer Suit to Boise Division..	48
Subpoena ad Respondendum.....	27
TESTIMONY ON BEHALF OF COMPLAIN- ANT:	
HICKENLOOPER, CHARLES A.....	56
Cross-examination	64
Redirect Examination	86
Recalled.....	112
Cross-examination	113
HICKENLOOPER, W. A.....	103
Cross-examination	106
WALKER, JOHN	90
Cross-examination	98
TESTIMONY ON BEHALF OF DEFEND- ANTS:	
CHRISTY, T. H.	120
Cross-examination	125
Redirect Examination	128
D'ARCY, W. J.	135
Cross-examination	139
Redirect Examination	145
Recross-examination	146
HART, CHARLES L.	113
Cross-examination	116
Redirect Examination	119

Index.		Page
TESTIMONY ON BEHALF OF DEFEND-		
ANTS—Continued:		
Recalled		129
Cross-examination		131
Redirect Examination		133
HILL, THOMAS H.		148
Cross-examination		149

[Names and Addresses of Attorneys of Record.]

J. D. SKEEN, Esq., Attorney for Plaintiff,
Salt Lake City, Utah.

Messrs. HANSBROUGH & GAGON, JOHN W.
JONES, Esq., Attorneys for Defendants,
Residence, Blackfoot, Idaho.

*In the Circuit Court of the United States for the
District of Idaho.*

CHARLES A. HICKENLOOPER,
Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS IN-
VESTMENT COMPANY, LIMITED (a
Corporation), and W. J. D'ARCY, Receiver
of the said THE CRYSTAL SPRINGS IN-
VESTMENT COMPANY, LIMITED,
Defendants.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the
United States for the District of Idaho:

Charles A. Hickenlooper, a citizen of the State of
Utah, residing at Ogden, in the Northern Division of
the said State of Utah, brings this, his bill of com-
plaint, against T. H. Christy, who is now and at all
times herein mentioned has been a citizen and resi-
dent of the State of Idaho; The Crystal Springs In-
vestment Company, Limited, a corporation, incor-
porated and existing under and pursuant to the laws
of the State of Idaho, and which is now and at all

times herein mentioned has been a citizen and resident of the said State of Idaho; and W. J. D'Arcy, receiver of the Crystal Springs Investment Company, Limited, a corporation, who is now and at all times herein mentioned has been a citizen and resident of the said State of Idaho, defendants; therefore your orator complains and says:

1.

That the defendant, The Crystal Springs Investment Company, Limited, is a corporation organized and existing under and pursuant to the laws of the State of Idaho, with its principal place of business at Blackfoot, Idaho. . [1*]

2.

That on the thirteenth day of April, 1909, upon petition of A. G. Roberts et al., the District Court of the Sixth Judicial District of the State of Idaho, for Bingham County, made and entered its order appointing the defendant W. J. D'Arcy receiver of the defendant, The Crystal Springs Investment Company, Limited, and said defendant is still acting in the capacity of receiver of said corporation.

3.

That on and prior to the eighth day of July, 1907, Thomas G. Clegg, was the owner and in possession of the following described real estate located in Bingham County, State of Idaho, to wit:

Lots 1 and 2 of Section 19, in township 4' south of range 33 east of Boise Meridian, containing 61.49 acres;

Also the north half of the northeast quarter of Sec-

*Page-number appearing at foot of page of original certified Record.

tion 24, in township 4 south, of range 32 east, Boise Meridian, containing 80 acres;

Also the southeast quarter of the northeast quarter of Section 24, in township 4 south, of range 32 east of Boise Meridian;

And also the north half of the southwest quarter of Section nineteen, in township 4 south of range 33 east of Boise Meridian, containing 150.85 acres.

4.

That on the said eighth day of July, 1907, for a valuable consideration, the said Thomas G. Clegg and his wife, Rachel A. Clegg, made, executed and delivered to one S. J. Rich, at Blackfoot, Idaho, their certain negotiable promissory note, whereby they undertook and agreed to pay the said S. J. Rich on the eighth day of December, 1910, the sum of Fourteen Hundred Dollars (\$1400.00), with interest thereon at the rate of eight per cent per annum, and on said day the said Thomas G. Clegg and Rachel A. Clegg, to secure payment of said note, made, executed, and delivered to the said S. J. [2] Rich a mortgage upon the premises hereinabove described; a copy of which note and mortgage is hereto attached, marked Exhibits "A" and "B," and made a part of this bill.

5.

That thereafter and before the twenty-fifth day of September, 1908, the said Thomas G. Clegg and wife sold and conveyed the real estate described in paragraph number three hereof to the defendant, The Crystal Springs Investment Company, Limited.

6.

That on the twenty-fifth day of September, 1908,

for a valuable consideration, the defendant, The Crystal Springs Investment Company, Limited, made, executed and delivered to Thomas G. Clegg its certain negotiable promissory note whereby it undertook and agreed to pay the said Thomas G. Clegg the sum of Two Thousand Eighty Dollars (\$2,080.00) on or before the first day of May, 1909, with interest thereon at the rate of eight per cent per annum, and to secure payment of said note the said The Crystal Springs Investment Company, Limited, made, executed and delivered to the said Thomas G. Clegg a certain mortgage upon the real estate described in paragraph three hereof, which said mortgage was subject to the mortgage hereinbefore referred to as Exhibit "B"; that a copy of the mortgage last above described is hereto attached, made a part of this bill and marked Exhibit "C."

7.

That on the twenty-sixth day of October, 1908, the said Thomas G. Clegg sold, assigned and transferred the said mortgage marked Exhibit "C" to the Brown-Hart Company, Limited, a corporation, of the State of Idaho, and thereafter on the twenty-third day of February, 1909, the said Thomas G. Clegg sold and assigned all his existing rights in and to the said note and mortgage to the defendant, T. H. Christy, and on the twentieth day of April, 1910, the said Brown-Hart Company, Limited, sold, assigned and transferred all its right, title and interest in and to said mortgage to the said T. H. Christy and the said T. H. Christy now claims to be the [3] legal owner and holder of said note and mortgage.

8.

That the said Thomas G. Clegg and the said The Crystal Springs Investment Company, Limited, and their successors in interest failed and neglected to make payment of the principal and interest due on said note and mortgage attached hereto as Exhibits "A" and "B," and during the year 1908 suit was instituted in the District Court of the Sixth Judicial District of the State of Idaho for Bingham County to recover judgment on said note and to foreclose the mortgage attached to this bill as Exhibit "B," and such proceedings were thereafter had that a judgment was regularly made and given in said action against the said The Crystal Springs Investment Company, Limited, for the sum of Eighteen Hundred Eleven Dollars and Sixty Cents (\$1811.60), said mortgage marked Exhibit "B" was foreclosed and an order of sale of all of the real estate described in paragraph three of this bill was duly and regularly made commanding the sheriff of Bingham County, State of Idaho, to sell said real estate pursuant to the law and the practice of said court. Said real estate was duly sold pursuant to said proceedings, the said S. J. Rich became the purchaser thereof, and a certificate of sale was regularly issued by the said sheriff to the said S. J. Rich on June 30, 1908, entitling him to a deed of conveyance of all of said real estate one year after said date.

9.

That the said The Crystal Springs Investment Company, Limited, became insolvent and the defendant W. J. D'Arcy was duly appointed receiver as

above set forth; that neither the said W. J. D'Arcy, as such receiver, nor the The Crystal Springs Investment Company, Limited, had money or the means of procuring money with which to redeem the said real estate from the sale to the said S. J. Rich, and on the twenty-eighth day of June, 1909, said receiver filed a petition in the said district court for Bingham County, Idaho, praying for an order authorizing and directing him as such receiver to borrow the sum of Twenty-five Hundred Dollars (\$2500.00) to [4] redeem said real estate from said sale and to secure payment of the said loan by mortgage upon the said real estate so redeemed and to pay interest thereon at the rate of twelve per cent per annum; and thereafter on the ninth day of July, 1909, the said District Court made and entered its order authorizing and directing said receiver to borrow the said sum of Twenty-five Hundred Dollars (\$2500.00) to redeem said property as aforesaid; that copies of said petition and order are hereto attached, made a part of this bill and marked Exhibits "D" and "E."

10.

Your orator further says that he was solicited by the said receiver and by the defendant, T. H. Christy, his predecessors in interest, and the stockholders and subsequent lien claimants of the real estate described in paragraph number three, to advance the said sum of Twenty-five Hundred Dollars (\$2500.00) with which to redeem said real estate from said sale to S. J. Rich, and the said receiver contracted and agreed with him that the repayment of the said money so loaned would be secured by a first mort-

gage upon said real estate and the said defendant, T. H. Christy, and his predecessors in interest, agreed with your orator that his loan should be prior to all other liens; that pursuant to said agreement with the said receiver and with the defendant, T. H. Christy, and his predecessors in interest, believing that the Court would make the order set out as Exhibit "E," and to save said property for the benefit of all interested therein, on the thirtieth day of June, 1909, your orator advanced Two Thousand Twelve Dollars and Seventy-six Cents (\$2012.76) to the said receiver, which said money was actually used by him in paying the judgment of the said S. J. Rich and redeeming the property described in paragraph three from said lien, judgment and foreclosure.

11.

That said receiver failed to make, execute and deliver to your orator a mortgage upon the said real estate set out in paragraph three; that on the first day of July, 1910, your orator demanded payment of said receiver of the sum of Two Thousand Twelve Dollars and Seventy-six Cents (\$2012.76), with interest thereon at the rate of twelve per cent per annum from the thirtieth day of June, 1909, to the thirtieth day of June, 1910, together with a reasonable attorney's fee; that said receiver duly allowed said claim, except as to attorney's fees, but refused payment for the reason that he had no funds or assets with which to make payment of said claim. [5]

12.

That thereafter on said second day of July, 1910,

upon motion the District Court for the county of Bingham, State of Idaho, granted your orator leave to institute suit against the said receiver in any court of competent jurisdiction to establish a lien upon the real estate described in paragraph three and to have said lien declared a first lien upon said property and to secure such other and further relief as the Court should adjudge him to be entitled to.

13.

Your orator further alleges that the said T. H. Christy has repudiated his agreement and the agreement of his predecessors in interest that your orator should have a first and prior lien upon said premises in consideration of his loaning the said sum of Two Thousand Twelve Dollars and Seventy-six Cents (\$2012.76) to the defendant, W. J. D'Arcy, as receiver, and has instituted a suit in the District Court for Bingham County, State of Idaho, to have the said second mortgage declared a first and prior lien upon said premises; that neither the said receiver nor the said defendant, The Crystal Springs Investment Company, Limited, has money or other assets with which to satisfy either of said mortgages, and said real estate is not sufficient to pay your orator a substantial portion of his claim after the satisfaction of the said mortgage marked Exhibit "C."

To the end, therefore, that your orator may have the relief which he can only obtain in a court of equity and that the defendants, and each of them, may answer the premises, but not upon oath, or affirmation, an answer under oath and affirmation being hereby expressly waived by your orator as to each

of said defendants, he now prays the Court:

1.

For judgment against the The Crystal Springs Investment Company, Limited, and W. J. D'Arcy, the receiver thereof, for the sum of Two Thousand Twelve Dollars and Seventy-six *Cent* (\$2012.76), with interest thereon at the rate of twelve per cent per annum from [6] the thirtieth day of June, 1909, together with a reasonable attorney's fee.

2.

That your orator be subrogated to the rights of the said S. J. Rich under the note and mortgage attached hereto as Exhibits "A" and "B"; that said mortgage be revived, reinstated and foreclosed according to law and the practice of this court and out of the proceeds of the sale of the said real estate that the costs and expenses of this proceeding, including a reasonable attorney's fee, be paid; that the judgment be paid in full, if sufficient be realized from the sale of said property, and after the payment thereof that the residue, if any, be paid to the junior lien claimants.

3.

That all other liens or claims upon or against said real estate or the proceeds therefrom be declared subsequent to the lien of your orator and permitted to participate in the proceeds from the sale of said property only after the payment of all costs and expenses of this proceeding, and such judgment as the Court may enter.

4.

If, in the opinion of the Court, your orator is not

entitled to a foreclosure and sale of said property, then your orator prays that he be subrogated to all of the rights formerly held by the said S. J. Rich, under the mortgage set forth as Exhibit "B"; that said mortgage be revived, reinstated and declared a first lien upon the real estate specifically described in paragraph number three.

5.

Your orator prays for such further and other relief in the premises as the nature of the circumstances of the case *as* may require. [7]

May it please your Honors to grant to your orator a writ of subpoenae to be directed to the defendant, T. H. Christy, to W. J. D'Arcy, receiver of the The Crystal Springs Investment Company, Limited, a corporation, and to the said The Crystal Springs Investment Company, Limited, and each of them, commanding them, and each of them, at a time set and under penalty therein to be specified, to personally appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises, and to state, perform and abide by such order, direction and decree as may be made against them, and each of them, in the premises, as shall seem meet and agreeable to equity, and your orator will ever pray.

J. D. SKEEN,

Solicitor for Complainant. [8]

United States of America,

State of Utah,

County of Weber,—ss.

Charles A. Hickenlooper, being first duly sworn,

on his oath says that he is the person named as the complainant in the foregoing bill of complaint; that he has read said bill, knows the contents thereof and that the same is true of his own knowledge, except as to those things therein stated on information and belief, and as to those matters he believes it to be true.

CHARLES A. HICKENLOOPER,

Affiant.

Subscribed and sworn to before me this 5th day of July, 1910.

[Seal]

D. A. SKEEN,

Notary Public for Weber County, Utah. [9]

Exhibit "A" [to Complaint].

PROMISSORY NOTE SECURED BY REAL
ESTATE MORTGAGE.

\$1400.00

Blackfoot, Idaho, July 8, 1907.

On December 8th, 1910, after date, without grace, for value received, we or either of us promise to pay S. J. Rich, or order, at the Blackfoot State Bank in Blackfoot, Idaho, the sum of Fourteen Hundred Dollars, lawful money of the United States, with interest thereon at the rate of eight (8) per centum per annum from date payable semi-annually.

In case default shall be made in the payment of the interest as above specified, then it shall be optional with the holder of this note to consider the principal sum due and payable immediately and the same shall be payable on demand. Makers and endorsers hereof do each severally agree to the above provision and do also waive demand, notice, protest and notice of protest and nonpayment, guarantee-

ing to pay all costs of collection including a reasonable attorney's fee, in case this note is collected by an attorney, and consent that time of payment may be extended without notice thereof.

Due January 4, 1910.

(Signed) THOMAS G. CLEGG.

RACHEL A. CLEGG. [10]

Exhibit "B" [to Complaint].

ESTATE MORTGAGE.

THIS INDENTURE, made the 8th day of June in the year nineteen hundred and seven between Thomas G. Clegg and Rachel A. Clegg, husband and wife of the county of Bingham and State of Idaho, the parties of the first part, and S. J. Rich of the County of Bingham and the State of Idaho, the party of the second part.

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Fourteen Hundred and no/100 (\$1400.00) Dollars, do by these presents grant, bargain, sell and convey unto said party of the second part and to his heirs and assigns forever all that certain real property situated in the county of Bingham and state of Idaho, and bounded and particularly described as follows, to wit:

Lots One (1) and Two (2) of Section Nineteen (19) in Township Four (4) South of Range Thirty-three (33) East of Boise Meridian, containing Sixty-one and 49/100 (61.49) acres; also the north half of the Northeast Quarter (N. 1/2 NE. 1/4) of section Twenty-four (24) in Township Four (4) South, of Range thirty-two (32) East Boise Meridian, con-

taining eighty (80) acres. Also the south-east quarter of the Northeast quarter, (SE. $\frac{1}{4}$ NE. $\frac{1}{4}$), of Section Twenty-four (24) in Township Four (4) South, of Range Thirty-two (32) East of Boise Meridian. Also the north half of the South-west quarter (N. $\frac{1}{2}$ SW. $\frac{1}{4}$) of section Nineteen (19) in Township Four (4) South of Range Thirty-three (33) East of the Boise Meridian containing one hundred and fifty and $\frac{85}{100}$ (150.85) acres. This mortgage is given to secure a part of the purchase price of all of the above described tracts of land, with the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.

This grant is intended as a mortgage to secure the payment of one certain promissory note of even date herewith, executed and delivered by the said first parties to the said party of the second part for the said sum of \$1400.00, bearing interest at the rate of [11] 8 per centum per annum, interest payable semi-annually; principal falling due December 8th, 1910; principal and interest payable at the Blackfoot State Bank, Blackfoot, Idaho.

AND THESE PRESENTS shall be void if such payment be made. But in case default shall be made in the payment of the said principal sum of money, or any part thereof as provided in the said note, or if the interest be not paid as therein specified, then it shall be optional with the said part— of the second part, his executors, administrators or assigns, to consider the whole of said principal sum expressed in said note, as immediately due and payable, and immediately to enter into and upon all and singular

the above described premises, and to sell and dispose of the same according to law, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said promissory note, together with the costs and charges of foreclosure suit, including reasonable counsel fees, and also the amounts of all such payments of taxes, assessments, incumbrances or insurance as may have been made by said second party, his heirs or executors, with the interest on the same, rendering the overplus of the purchase money, if any, to the parties of the first part, their heirs, executors, administrators or assigns.

IN WITNESS WHEREOF the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) THOMAS G. CLEGG. [Seal]
 RACHEL A. CLEGG. [Seal]
 _____ [Seal]

Signed sealed and delivered in the presence of

J. O. STONE. [12]

Exhibit "C" [to Complaint].

REAL ESTATE MORTGAGE.

THIS INDENTURE, made the 25th day of September, in the year of our Lord one thousand nine hundred and eight, between the Crystal Springs Investment Company, Limited, a corporation, of the County of Bingham, and State of Idaho, the party of the first part, and Thomas G. Clegg, of the County of Bingham, State of Idaho, the party of the second part,

WITNESSETH. That the said party of the first part, for and in consideration of the sum of Two Thousand and Eighty Dollars, lawful money of the United States of America, and under and by virtue of a certain resolution of the Board of Directors of the said first party herein heretofore duly called and held at the principal place of business of said corporation, to wit. Blackfoot, Idaho, at which said meeting the President and Secretary of said first party were authorized and empowered to execute this mortgage upon the real estate of the said first party, and to deliver the same to the said second party, upon the said second party's payment of the amount herein specified, upon a former mortgage of said property heretofore executed to the Salisbury Company, a corporation which said payment has been made by the said party of the second part, and reference is hereby had to said resolution of authorization and the same is by such reference made a part hereof, does by these presents grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns, forever, all that certain real property situate in the County of Bingham and State of Idaho, and bounded and particularly described as follows, to wit:

The North half of the Southwest quarter, the Northwest quarter of the Southeast quarter and the Southwest quarter of the Northeast quarter of section Twenty-four (24), and the Southeast quarter of the Southwest quarter of said Section Twenty-four (24) and the Northeast quarter of the Northwest quarter and the Northwest quarter of the Northeast

quarter of Section Twenty-five (25), the Southwest quarter of the Southwest quarter of said section twenty-four (24), and the Northwest quarter of the Northwest quarter of said section Twenty-five (25), and the Southwest quarter of the Northwest quarter of said section Twenty-four (24) all in Township four (4) south of Range thirty-two (32) east of the Boise Meridian in Idaho, and also Lots one (1), two (2) and three (3) of section nineteen (19), in Township four (4), South of Range Thirty-three (33) east of the Boise Meridian, in Idaho, and the North half of the Northeast quarter, the Southeast quarter of the Northeast quarter of the Northeast quarter of the Southeast quarter of section twenty-four (24), in Township four (4) South, of Range thirty-two (32) East of the Boise Meridian, in Idaho, containing 680 acres more or less.

Together with all ditches, ditch rights of way and water rights thereto appertaining and belonging.

Together with all the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

This grant is intended as a mortgage to secure the payment of one certain promissory note of even date herewith, executed and delivered by the said first parties to the said party of the second part, for the said sum of \$2,080.00 due on or before May 1, 1909, [13] and bearing interest from date, at the rate of 8% per annum, interest payable at maturity, payable at Blackfoot, Idaho.

And these presents shall be void, if such payment be made, but in case default shall be made in the pay-

ment of the said principal, sum of money or any part thereof as provided in said note, or if the interest be not paid as therein specified, then it shall be optional with the said party of the second part, his executors, administrators or assigns, to consider the whole of said principal sum expressed in said note as immediately due and payable and immediately to enter into and upon all and singular the above-described premises and sell and dispose of the same according to law and out of the money arising from such sale to retain the principal and interest which shall then be due on the said promissory note, together with the costs and charges of foreclosure suit, including a reasonable sum as counsel fees, and also the amounts of all such payments of taxes, assessments, incumbrances, or insurance as may have been made by the said second party, his heirs, or executors, with interest on the same, rendering the overplus of the purchase money, if any there shall be, unto the said party of the first part, its successors or assigns.

IN WITNESS WHEREOF the said first party has caused these presents to be signed and executed by its President and Secretary and its corporate seal to be hereunto affixed, this day and year first above written.

THE CRYSTAL SPRINGS INVESTMENT
COMPANY, LIMITED.

By THOMAS G. CLEGG,
Its President.

[Seal] Attest: A. G. ROBERT,
Its Acting Secretary.

State of Idaho,
County of Bingham,—ss.

I DO HEREBY CERTIFY: That on this 25th day of September in the year of 1908, before me, John W. Jones, a Notary Public in and for said County and State, personally appeared Thomas G. Clegg and A. G. Robert, personally known to me to be, respectively the President and Acting Secretary of the Crystal Springs Investment Company, Limited, the corporation that executed the within and foregoing instrument, and they each acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal at Blackfoot, Idaho, the day and year first above written.

[Seal]

JOHN W. JONES.

My commission expires July 10, 1909.

[Endorsed]: 22,962—Crystal Springs Investment Co., to T. G. Clegg, Mortgage State of Idaho, County of Bingham,—ss. I hereby Certify That the Within Instrument was Filed for Record in This Office at the Request of Thomas G. Clegg on the 24th day of October, 1908, at 3 P. M. and was Duly Recorded in Book "Y" of Mortgages, page 139, Bingham County Records.

H. B. CURTIS,
County Recorder.
S. D. Hillard,
Deputy. [14]

Exhibit "D" [to Complaint].

*In the District Court of the Sixth Judicial District of
the State of Idaho, in and for the County of
Bingham.*

A. G. ROBERT, WILLIAM KRAACK, W. A. EDWARDS, J. A. MARTIN, L. C. ROCKWOOD, and A. B. ROBERT,

Plaintiffs,

vs.

CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), THOMAS G. CLEGG, O. R. DIBBLEE, W. H. GIBSON, W. C. NOBLE, W. W. PRIESTLEY, C. R. MURCHISON and W. A. HICKENLOOPER,

Defendants.

Petition.

The petition of W. J. D'Arcy, heretofore duly appointed by the proper order of the Judge of the above-entitled court, as receiver for the said defendant corporation, Crystal Springs Investment Company, Limited, respectfully shows to the Court:

That your receiver was heretofore, on the 13th day of April, 1909, duly appointed as the receiver for the defendant corporation above named, and forthwith took the oath of office as such and gave the undertaking conditioned as required by law in the penal sum of \$5,000.00, as required by the order of said Court, and thereupon, your petitioner entered upon the discharge of his duties as such receiver, and is now en-

gaged in the discharge of the duties of his said trust.

That your petitioner has ascertained that the said defendant corporation is the owner and possessed of a certain tract of land situate in the county of Bingham, State of Idaho, and described as follows, to wit: The Lots one and two of Section nineteen, in township four south, of range thirty-three E., B. M.; also the north half of the northeast quarter of Section twenty-four, in township four south, of range thirty-three east, Boise Meridian, in Idaho; also the southeast quarter of the northeast quarter and [15] the northeast quarter of the southeast quarter of Section twenty-four, in township four south, of range thirty-two E., B. M.; also the south half of the southwest quarter of Section nineteen, in township four south, of range thirty-three east, B. M., which said described property was conveyed to the said defendant corporation by Thomas G. Clegg and wife, said conveyance being subject to a certain mortgage thereon, executed in favor of one S. J. Rich; that said mortgage became due and the same was not paid, and during the year 1908, suit was instituted in the above-entitled District Court for the foreclosure of said mortgage of said property and judgment in foreclosure was entered in said action, and on June 2, 1908, execution in foreclosure issued out of said District Court directed to the Sheriff of Bingham County, Idaho, directing him to sell so much of said property as was necessary in the satisfaction of said judgment, and on June 30, 1908, all of said described property was sold to said S. J. Rich, he having bid therefor the sum of \$1,811.60.

That your petitioner is informed and believes that the said property so sold is worth an amount greatly in excess of the said sum of \$1,811.60, and is worth about the sum of \$5,000.00, and that it is necessary for your petitioner, in order to protect the interest of the said defendant corporation, to secure a sum necessary for the redemption of said property from said sale, for the said defendant corporation, and that said sum must be secured for such redemption before the period of redemption expires, to wit, June 30, 1909.

That your petitioner is informed and believes that he can borrow a sufficient sum with which to redeem said described property if he can secure from this Court an order so to do and an order authorizing and directing him to execute a mortgage on said described property, after redemption, for the amount necessary to redeem, with interest at the rate of 12 per cent per annum thereon.

Your petitioner further represents that he is, as such receiver, wholly without funds with which to redeem said property [16] and that unless the order above referred to be made herein, said described property will be lost to the defendant corporation and its assets greatly decreased thereby, in from \$2,000 to \$3,000.

WHEREFORE, your petitioner prays for an order of this Court authorizing and directing him as such receiver for the defendant corporation to borrow such a sum of money as may be necessary to redeem said property, not to exceed \$2,500.00, forthwith, and that your petitioner as such receiver be authorized and directed by an order of this Court, as

security for said loan, to execute to such person loaning said sum, as security therefor, a mortgage upon the property herein described, and to be so redeemed, for the sum so borrowed, with interest thereon at the rate of 12 per cent per annum.

Dated at Blackfoot, Idaho, June 28, 1909.

W. J. D'ARCY,
Petitioner.

State of Idaho,
County of Bingham,—ss.

W. J. D'Arcy, being first duly sworn, deposes and says: That he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true, except as to those matters which are therein stated to be on information and belief, and as to those matters, he believes it to be true.

W. J. D'ARCY.

Subscribed and sworn to before *to before* me this 28th day of June, 1909.

[Seal]

JOHN W. JONES,
Notary Public. [17]

Exhibit "E" [to Complaint].

(Title of Court and Cause.)

Order.

On reading and filing the petition of W. J. D'Arcy, receiver of the defendant corporation above named, praying for an order of this Court authorizing and directing said petitioner, as the receiver of said corporation, to borrow such a sum of money as may be necessary for the purpose of redeeming certain

property sold on execution in foreclosure, belonging to said defendant corporation and for an order authorizing and directing him as such receiver to execute a mortgage to the person making such loan, in the amount thereof, as security therefor, upon the property in said petition described, and to be so redeemed, with interest at 12 per cent per annum thereon, said sum not to exceed \$2,500.00 and it appearing from said petition that certain lands belonging to said defendant corporation were sold under mortgage foreclosure execution, on the 30th day of June, 1908, for the sum of \$1,811.60 which said sum does not exceed one-half of the value of said property, and that the period for redemption expires on June 30th, 1909, and that the said receiver has no funds in his possession with which to redeem said property from said sale, and that said receiver can borrow the requisite sum necessary therefor, provided he be authorized and directed so to do, and by an order of this Court empowered to execute a mortgage on said property to be so redeemed, for the amount necessary to redeem, with interest at the rate of 12 per cent per annum thereon, and that such action on the part of the receiver would inure greatly to the benefit of said defendant corporation.

IT IS THEREFORE ORDERED, that the said receiver of the said defendant corporation, W. J. D'Arcy be and he is hereby authorized and directed to borrow such a sum as may be necessary to redeem the property in his said petition and hereinafter described [18] from sale on execution in foreclosure, on the 30th day of June, 1908, and that with said sum

said property be redeemed for *an* in the name of the said defendant corporation, said property being described as Lots 1 and 2 of Section 19, in T. 4 S., of R. 33 E., B. M., in Idaho; also the N. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, of Section 24, T. 4 S. of R. 32 E., B. M., also the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Section 24, in T. 4 S. of R. 32 E., B. M.; also the N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 19, in T. 4 S. of R. 33 E., B. M., in Idaho.

That said sum to be so borrowed must not exceed the sum of \$2,500.00, and it is further ordered that the said receiver be and he is hereby authorized and directed, as security for the sum so borrowed to execute a mortgage upon the said property herein described, in said amount, bearing interest at the rate of 12 per cent per annum, and to deliver the same to the person from whom said sum is borrowed, who is to be the mortgagee therein.

Dated at Blackfoot, Idaho, July 9th, 1909.

J. M. STEVENS,
Judge of Said Court.

[Endorsed]: Filed July 8, 1910. A. L. Richardson, Clerk. [19]

In the Circuit Court of the United States for the District of Idaho.

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

Affidavit of Charles A. Hickenlooper [on Application for Order Appointing J. T. Danilson to Serve Subpoenas].

State of Utah,

County of Weber,—ss.

Charles A. Hickenlooper, being duly sworn, upon his oath says that he is plaintiff in the above-entitled suit; that the defendants T. H. Christy and W. J. D'Arcy are residents of Blackfoot, in Bingham County, State of Idaho; that the principal place of business of the Crystal Springs Investment Company, Limited, is Blackfoot, Bingham County, Idaho, and the officers of said corporation upon whom service of process should be made reside in said city and county; that affiant is informed by the United States Marshal for the State of Idaho that there is no Deputy United States Marshal residing near Blackfoot, Idaho, and that the estimated expense of making service of the process herein is Forty-six Dollars and Sixty-eight Cents (\$46.68); that John T. Danilson is the sheriff for Bingham County, Idaho, and is a fit

and proper person to make service of process.

WHEREFORE affiant makes application and prays for an order of the Court appointing, designating and authorizing the said John T. Danilson, or some other fit and proper person residing at Blackfoot to serve the subpoenas in this proceeding.

C. A. HICKENLOOPER. [20]

Subscribed and sworn to before me this 13th day of July, 1910.

[Seal]

W. R. SKEEN,
Notary Public.

My commission expires July 18, 1913.

[Endorsed]: Filed July 15, 1910. A. L. Richardson, Clerk. [21]

In the Circuit Court of the United States for the District of Idaho.

CHARLES A. HICKENLOOPER,
Complainant,

vs.

T. H. CRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,
Defendants.

Order [Appointing J. T. Danilson to Serve Subpoenas].

It appearing to the Court that the defendants in the above-entitled suit are residing at Blackfoot, in the State of Idaho, and that there is no United States

Marshal or Deputy United States Marshal located at or within a reasonable distance from Blackfoot,—

NOW, THEREFORE, on motion of J. D. Skeen, solicitor for the said plaintiff, it is ordered that John T. Danilson be and he is hereby appointed, authorized and directed to make service of the subpoenæ in the above-entitled suit upon each of the defendants therein and make affidavit of such service in the manner prescribed by law.

Dated this 15th day of July, 1910.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed July 15, 1910. A. L. Richardson, Clerk. [22]

*In the Circuit Court of the United States for the
Southern Division of the District of Idaho.*

IN EQUITY—No. 139.

CHARLES A. HICKENLOOPER,
Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,
Defendants.

Subpoena ad Respondendum.

The President of the United States of America, to T. H. Christy, The Crystal Springs Investment

Company, Limited, a Corporation, and W. J. D'Arcy, Receiver of the Said The Crystal Springs Investment Company, Limited, Greeting:

You and each of you are hereby commanded that you be and appear in said Circuit Court of the United States, at the Courtroom thereof, in Pocatello, in said District, on the first Monday of September next, which will be the 5th day of September, A. D. 1910, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said court, wherein Charles A. Hickenlooper is complainant and you are defendants, and further to do and receive what our said Circuit Court shall consider in this behalf and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to COMMAND you, the MARSHAL of said District, or your DEPUTY, to make due service of this our WRIT of SUBPOENA and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, and the seal of our said Circuit Court affixed at Boise, in said District, this 8th day of July, in the year of our Lord, One Thousand Nine Hundred and Ten and of the Independence of the United States the One Hundred and 35th.

[Seal]

A. L. RICHARDSON,
Clerk.

MEMORANDUM PURSUANT TO EQUITY
RULE NO. 12 OF THE SUPREME COURT
OF THE UNITED STATES.

The defendant is to enter his appearance in the above-entitled suit in the office of the Clerk of said court on or before the day at which the above Writ is returnable; otherwise the Complainant's Bill therein may be taken *pro confesso*.

[Endorsed]: No. 139. In the Circuit Court of the United States for the Southern Division of the District of Idaho. In Equity. Chas. A. Hickenlooper vs. T. H. Christy et al. Subpoena ad Respondendum. Returned and filed Oct. 4, 1910. A. L. Richardson, Clerk. [23]

[Affidavit of J. T. Danilson Re Service of Subpoena.]

*In the Circuit Court of the United States for the
District of Idaho.*

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

John T. Danilson, being duly sworn, deposes and says: That he is, and at all times mentioned herein, was, over the age of twenty-one years, and not a party to the within action; that he received the

within annexed subpoenae on the 18th day of July, 1910, and personally served the same upon T. H. Christy on the 23d day of July, 1910, and upon W. J. D'Arcy, Receiver of the Crystal Springs Investment Company, Limited, on the 22d day of July, 1910, at Blackfoot, Bingham County, Idaho.

Dated this 3d day of Sept., 1910.

JOHN T. DANILSON.

Subscribed and sworn to before me this 3d day of September, 1910.

[Seal]

T. A. JOHNSTON,
Probate Judge. [24]

*In the Circuit Court of the United States for the
District of Idaho.*

CHARLES A. HICKENLOOPER,
Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,
Defendants.

Appearance [of T. H. Christy].

Comes now the defendant, T. H. Christy, by his attorneys, Hansbrough & Gagon, of Blackfoot, Idaho, and appears in the above-entitled cause, and hereby orders and directs the clerk of the above Court, to

enter the appearance of the said defendant, T. H. Christy in said cause.

To Hon. A. L. Richardson, Clerk of the above-entitled court, Boise, Idaho.

HANSBROUGH & GAGON,
Attorney for Defendant, T. H. Christy,
Residence, Blackfoot, Idaho.

[Endorsed]: Filed Sept. 2, 1910. A. L. Richardson, Clerk. [25]

*In the Circuit Court of the United States for the
District of Idaho.*

CHARLES A. HICKENLOOPER,
Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,
Defendants.

Appearance [of W. J. D'Arcy, Receiver].

To the Clerk of said Court:

Now comes the defendant, W. J. D'Arcy, Receiver of The Crystal Springs Investment Company, Limited, a corporation, by his attorney, John W. Jones, and hereby enters his appearance in said action:

Please enter my appearance as attorney for the

said defendant in the above-entitled cause.

Dated September 2, 1910.

JOHN W. JONES,
Attorney for said Defendant.
Residence, Blackfoot, Idaho.

[Endorsed]: Filed Sept. 4, 1910. A. L. Richardson, Clerk. [26]

*In the Circuit Court of the United States for the
District of Idaho.*

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,
Defendants.

Answer [of T. H. Christy].

The answer of T. H. Christy, one of the above-named defendants, to the bill of complaint of the above-named plaintiff:

In answer to the said bill, I, T. H. Christy, say as follows:

1.

Admit that the Crystal Springs Investment Company, Limited, is a corporation organized and existing under the laws of the State of Idaho, with its principal place of business at Blackfoot, Idaho.

2.

Admit that on the 13th day of April, 1909, upon petition of A. G. Robert et al., the District Court of the Sixth *Judicial of* Idaho, in and for Bingham, County, made and entered its order appointing W. J. D'Arcy, receiver of the Crystal Springs Investment Company, Limited, as alleged in paragraph two of the bill of complaint herein.

3.

Admit the ownership of the land described in the bill of complaint herein, by Thomas G. Clegg, on and prior to July 8th, 1907, as alleged in paragraph three of the bill of complaint herein; and admit the execution and delivery of the note and mortgage by Thomas G. Clegg and Rachel Clegg, his wife, to S. J. Rich, as alleged in paragraph four of the bill of complaint herein, and admit the execution [27] and delivery of the note and mortgage by Thomas G. Clegg and Rachel Clegg, his wife, to A. J. Rich as alleged in paragraph four of the bill of complaint herein, and admit the sale and transfer of the land described in paragraph three of the bill of complaint herein, to the Crystal Springs Investment Company, Limited, as alleged in paragraph five of the bill of complaint herein; and admit the execution and delivery of the note and mortgage by the Crystal Springs Investment Company, Limited, to Thomas G. Clegg as alleged in paragraph six of the bill of complaint herein; and admit the sale and transfer of the mortgage marked Exhibit "C" to the Brown Hart Company, Limited, a corporation, and to T. H. Christy by Thomas G. Clegg, and also the sale

and transfer of said mortgage by the Brown Hart Company, Limited to T. H. Christy, as alleged in paragraph seven of the bill of complaint herein; and admit the failure to pay and foreclosure and sale of the property, and purchase of the same by S. J. Rich as alleged in paragraph eight of the bill of complaint herein; and admit the insolvency of the Crystal Springs Investment Company, Limited, and the appointment of W. J. D'Arcy, and the order of the Court to borrow money to redeem said property as alleged in paragraph nine of the bill of complaint herein.

4.

Deny that I ever solicited the said complainant to loan or advance to said receiver, or to anyone else, the sum of \$2500.00, or any other sum, with which to redeem the property described in paragraph three of the bill of complaint herein, or otherwise described, or to redeem any other property from the sale to S. J. Rich or to anyone else, as alleged in the bill of complaint herein, or otherwise or at all; and according to my information I deny that my predecessors in interest ever, or at any time, solicited the said complainant to loan or advanced to said receiver, or to anyone else the sum of \$2500.00, or any other sum, with which to redeem the property described in paragraph three of the bill of complaint herein; or otherwise described, or to redeem any other property [28] from the sale to S. J. Rich, or to anyone else, as alleged in the bill of complaint herein, or otherwise or at all; and I deny that I ever or at all agreed with the complainant herein, or with

anyone else, or agreed at all, that the loan of complainant be prior to all other liens, as alleged in the bill of complaint, or otherwise or at all, and deny that I ever contracted or agreed with complainant or with anyone for him, or at all, to anything, in relation to said or any advance or loan, as alleged in the bill of complaint or at all; and according to my information and belief, I deny that my predecessors in interest, or anyone for them, ever or at all, agreed with the complainant, or with anyone else for him, or agreed at all, that said or any loan of complainant should be prior to all other liens, as alleged in the bill of complaint, or otherwise, or at all; and according to my information and belief I deny that the said receiver contracted and agreed with the said complainant, or with anyone else for him, or at all, that the repayment of the said or any money so loaned or loaned at all, would be secured by a first mortgage upon said or any real estate as alleged in the bill of complaint, or otherwise or at all; and I deny that pursuant to said or any such agreement with the said receiver and with myself and my predecessors in interest, as alleged in the bill of complaint or at all, on the Thirteenth day of June, or at all, the complainant advanced \$2,012.76 to the said receiver for said purpose; I admit that the said complainant advanced said sum to the said receiver for the purpose of redeeming said property from said sale to S. J. Rich, but allege that he did so by an arrangement wholly between said complainant and said receiver.

5.

Deny that I have repudiated my agreement or any

agreement and the agreement or any agreement of my predecessors in interest as alleged in the bill of complaint, or otherwise or at all, I deny that I ever made any agreement with complainant or with anyone for him, as alleged in the bill of complaint, or otherwise or at all, and deny that I ever repudiated any agreement as alleged in the [29] bill of complaint, or otherwise or at all; and deny that in consideration of complainant's loaning the said receiver the said sum of \$2,012.76, that he is entitled to or should have first lien on said property, as alleged in the bill of complaint, or at all.

6.

Your *orthor* further says, that he purchased said note in good faith and for value, that he never at any time had any contract or agreement in relation to the same with the Crystal Springs Investment Company, Limited, or with W. J. D'Arcy, said receiver, nor with the complainant herein in relation thereto, that the Crystal *S¹/₂rings* Investment Company, Limited, made and executed said mortgage marked Exhibit "C" and set out in the bill of complaint herein which was afterwards transferred to me, said Christy, that after default in the payment thereof the same was foreclosed by action in the District Court of the Sixth Judicial District of Idaho, in and for Bingham County, and the property described therein sold, that it was the duty of the said Crystal Springs Investment Company, to redeem said property from the sale of said S. J. Rich, as aforesaid, and also to pay off the mortgage set out in the bill of complaint marked Exhibit "C," that said com-

plainant should not be subrogated to the rights of said S. J. Rich, and that the note and mortgage marked Exhibits "A" and "B" should not be revived, reinstated and foreclosed against this defendant as prayed for in the bill of complaint, and that the claim of the said complainant against the said Crystal Springs Investment Company should not be declared a first lien on said property described in paragraph three of the bill of complaint, but that said bill should be dismissed with costs, as to this defendant, and your orator says that the bill of complaint should be dismissed at complainants costs, as to this defendant.

T. H. CHRISTY.

HANSBROUGH & GAGON,

Solicitors for T. H. Christy.

Residence, Blackfoot, Idaho. [30]

State of Idaho,
County of Bingham,—ss.

T. H. Christy, being duly sworn, deposes and says: I am the above-named defendant; so much of the foregoing answer as concerns my own acts and deed is true to the best of my own knowledge; and so much thereof as concerns the acts or deed of any other person or persons, I believe to be true.

T. H. CHRISTY.

Subscribed and sworn to before me this 19th day of September, 1910.

[Seal]

GEO. F. GAGON,

Notary Public.

[Endorsed]: Filed Sept. 21, 1910. A. L. Richardson, Clerk. [31]

*In the Circuit Court of the United States for the
District of Idaho.*

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

Answer [of W. J. D'Arcy, Receiver].

The answer of W. J. D'Arcy, receiver of The Crystal Springs Investment Company, Limited, a corporation, one of the defendants in the bill of complaint of Charles A. Hickenlooper, complainant.

This defendant now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

Admits that the defendant, The Crystal Springs Investment Company, Limited, is a corporation organized and existing under and purusant to the laws of the State of Idaho, with its principal place of business at Blackfoot, Idaho.

Admits that on the 13th day of April, 1909, upon

petition of A. G. Robert et al., the District Court of the Sixth Judicial District of Idaho, in and for Bingham County, made and entered its order appointing this answering defendant receiver of said The Crystal Springs Investment Company, Limited, and that this answering defendant is still acting in the capacity of receiver of said corporation. [32]

Admits that on and prior to the 8th day of July, 1907, Thomas G. Clegg was the owner and in the possession of the real estate situated in Bingham County, State of Idaho, as particularly described in paragraph 3 of complainant's bill of complaint.

Admits that on the said 8th day of July, 1907, said Thomas G. Clegg and his wife, Rachel A. Clegg, made, executed and delivered to one S. J. Rich, at Blackfoot, Idaho, their certain negotiable promissory note to the purport and effect as set forth in paragraph 4 of said bill of complaint and executed and delivered to the said S. J. Rich, to secure payment thereof, a mortgage upon the premises described in said bill of complaint, as alleged in said paragraph 4 thereof.

Admits that thereafter, and before the 25th day of September, 1908, the said Thomas G. Clegg and wife sold and conveyed the real estate as described in said bill of complaint, to the defendant, The Crystal Springs Investment Company, Limited.

Admits that on the 25th day of September, 1908, said defendant, The Crystal Springs Investment Company, Limited, made, executed and delivered to said Thomas G. Clegg its certain promissory note and mortgage, as set forth and alleged in paragraph

6 of said bill of complaint, and admits the assignment thereof, by the said Thomas G. Clegg, as in paragraph 7 of said bill of complaint alleged.

Admits that the said Thomas G. Clegg and the said The Crystal Springs Investment Company, Limited, and their successors in interest failed and neglected to make payment of the principal and interest due on the said note and mortgage executed by the said Clegg to the said Rich and the institution of foreclosure proceedings and the sale of said real estate, pursuant to law, as alleged in paragraph 8 of said bill of complaint and that on June 30, 1908, said S. J. Rich became the purchaser of said real estate, sold pursuant to said proceedings, and certificate of sale was regularly issued by the sheriff of Bingham County, Idaho, to said S. J. Rich, on said date, entitling him to a deed of conveyance of all of said [33] real estate one year after said date, as alleged in paragraph 8 of complainant's bill of complaint.

Admits each and every of the allegations contained in paragraph 9 of complainant's bill of complaint.

Denied that this answering defendant, as receiver as aforesaid, or in any capacity, as alleged in said bill of complaint or at all, solicited the said complainant to advance the said sum of \$2,500.00 or any other sum or amount whatever, with which to redeem the property described in paragraph 3 of said bill of complaint, or to redeem any other property from the sale to S. J. Rich or anyone else, as alleged in said bill of complaint, or at all, and denied that this answering defendant as receiver, or in any capacity or at all, con-

tracted and agreed or contracted or agreed as alleged or at all, with said complainant, or anyone for him, or at all, that the repayment of said money so loaned would be secured by a first mortgage upon said real estate, or secured in any manner other than by the execution of a mortgage on said described premises, bearing interest at the rate of twelve per cent per annum as provided in the order referred to in said bill of complaint and attached thereto and made a part thereof, as Exhibit "E," and alleges that said complainant proffered to advance to the said receiver such sum of money as might be necessary to redeem said real estate from said sale to said S. J. Rich and to take a mortgage on said premises for the amount so advanced as provided in the order attached to said bill of complaint heretofore referred to, marked Exhibit "E," and thereupon, this answering defendant filed the petition and secured the order referred to in said bill of complaint and made a part thereof, as Exhibits "D" and "E," and this defendant did not *them*, or at any time or at all, contract or agree with complainant that the repayment of said money would be secured by a first mortgage upon said real estate or otherwise than as herein alleged.

Admits that on the 30th day of June, 1909, said complainant advanced \$2,012.76 to this answering defendant, as receiver, but [34] alleges that the same was advanced pursuant to the said proffer as aforesaid, and not otherwise, and admits that said sum of money was actually used by said receiver in paying the judgment of the said S. J. Rich and redeeming the property described in paragraph 3 of

said bill of complaint, from said lien, judgment and foreclosure.

Admits the allegations contained in paragraph II of said bill of complaint, but alleges that said answering defendant has been at all times and is now ready and willing to make, execute and deliver a mortgage upon the real estate, as described in paragraph 3 of said bill of complaint, pursuant to the order of Court as made on the said 9th day of July, 1909, and said complainant has been at all times so advised.

And this defendant denied all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or things in the said plaintiff's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

W. J. D'ARCY,

Receiver of the Said The Crystal Springs Investment
Company, Limited.

JOHN W. JONES,

Solicitor for Said Defendant.

Residence, Blackfoot, Idaho. [53]

State of Idaho,
County of Bingham,—ss.

W. J. D'Arcy, being first duly sworn, makes solemn oath and says: I am the above-named defendant. So much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge; and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

W. J. D'ARCY.

Sworn to before me this 30th day of September, 1910.

[Seal]

GEO. F. GAGON,
Notary Public for Bingham County, Idaho.

[Endorsed]: Filed Oct. 3, 1910. A. L. Richardson,
Clerk. [36]

**Stipulation for Appointment of Daniel Hamer, as
Special Examiner.**

HANSBROUGH & GAGON, G. F. Hansbrough,
Attorneys-at-Law, Geo. F. Gagon.
Blackfoot, Idaho.

Blackfoot, Idaho, October 3, 1910.

Geo. E. Gray, Esq.,
Attorney at Law,
Pocatello, Idaho.

Dear Sir:

We have just consulted with Mr. J. W. Jones, the other counsel in the receivership case of Hickenlooper vs. Christy and it is entirely satisfactory that the hearing may be had before Daniel Hamer, at

Blackfoot, about the 15th day of December next. If this is agreeable to you and the Court you may have an order made to this effect.

Yours very truly,

HANSBROUGH & GANON.

GFG-EEL.

[Endorsed]: Filed Oct. 4, 1910. A. L. Richardson,
Clerk, [37]

*In the Circuit Court of the United States for the
District of Idaho.*

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

Replication [to Answer of T. H. Christy].

The replication of the above-named plaintiff to the answer of the above-named defendant, T. H. Christy.

This repliant, saving and reserving unto himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication, thereunto sayeth that he does and will ever maintain and prove his said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer

of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this Honorable Court shall direct, and humbly as in and by his said bill he has already prayed.

J. D. SKEEN,
Solicitor for Plaintiff.

[Endorsed]: Filed October 20, 1910. A. L. Richardson, Clerk. [38]

*In the Circuit Court of the United States for the
District of Idaho.*

CHARLES A. HICKENLOOPER,
Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,
Defendants.

Replication [to Answer of W. J. D'Arcy, Receiver].

The replication of the above-named plaintiff to the answer of the above-named defendant, W. J. D'Arcy,

Receiver of the Crystal Springs Investment Company, Limited.

This repliant, saving and reserving unto himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendants, for replication thereunto sayeth that he does and will ever maintain and prove his said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without that, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all of which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly as in and by his said bill he has already prayed.

J. D. SKEEN,
Solicitor for Plaintiff.

[Endorsed]: Filed October 20, 1910. A. L. Richardson, Clerk. [39]

Acknowledgment of Service of Replications.]

*In the Circuit Court of the United States for the
District of Idaho.*

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. J. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

Service of the replication in the above-entitled cause is acknowledged this 19th day of October, 1910.

HANSBROUGH & GAGON,

Solicitors for Defendant, T. H. Christy.

[Endorsed]: Filed Oct. 27, 1910. A. L. Richardson, Clerk. [40]

*In the Circuit Court of the United States for the
District of Idaho.*

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. J. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

Service of the replication in the above-entitled cause is acknowledged this 26th day of October, 1910.

JOHN W. JONES,

Solicitor for Defendant, W. J. D'Arcy, Receiver of the Crystal Springs Investment Company, Limited.

[Endorsed]: Filed Oct. 29, 1910. A. L. Richardson, Clerk. [41]

In the Circuit Court of the United States for the District of Idaho.

CHARLES A. HICKENLOOPER,

Plaintiff,

vs.

T. H. CHRISTY et al.,

Defendants.

Stipulation [to Transfer Suit to Boise Division].

It is stipulated by and between counsel for the respective parties in the above-entitled suit, that said suit may be transferred to the Boise Division of the above court, and be set and finally disposed of at the convenience of the Judge of said court.

Dated April 25, 1911.

J. D. SKEEN,

Counsel for Complainant.

HANSBROUGH & GAGON,

Counsel for Defendant, E. H. Christy.

JOHN W. JONES,

Counsel for Defendant, W. J. D'Arcy, Receiver, and The Crystal Springs Investment Company.

[Endorsed]: Filed April 30, 1911. A. L. Richardson, Clerk. [42]

*In the Circuit Court of the United States for the
District of Idaho.*

CHARLES HICKENLOOPER,

Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

Memorandum Opinion.

DIETRICH, District Judge. (Orally)

Gentlemen: In view of certain features of the record, which are practically undisputed, I have concluded that it is unnecessary to take under advisement the questions of law which have been so elaborately argued. The plaintiff by his bill represents that he advanced the money for which he here seeks security in accordance with an understanding with the receiver of The Crystal Springs Investment Company that the money so advanced should be regarded as a loan and was to be secured by a first mortgage upon the real estate described in the bill. In the pleading reference is made to a petition which was presented to the Court in which the receiver was acting, authorizing him to borrow a sufficient amount of money to redeem from the foreclosure sale referred

to, and to an order which was made by the Court in response to such petition, a copy of the petition and the order being attached as exhibits to the bill. It is to be inferred from the allegations of the bill itself that the plaintiff, when he made the advancement to the receiver, expected to be secured in accordance with and by virtue of the authority conferred by the order, by which, however, it is to be noted, the [43] receiver is not expressly authorized to give a first mortgage, but is only authorized to give a mortgage. Whatever view may be taken of the evidence upon certain other points, it is clear I think that neither the defendant Christy nor his assignor ever agreed with the plaintiff that if he advanced the requisite amount to the receiver the plaintiff should have a lien superior to that of the second mortgage. Assuming that such proposition was made by the plaintiff, the evidence would not support a finding that it was accepted or agreed to. The most favorable view of the record that can be taken upon this point is that the proposition was not expressly rejected. My view of the facts is that the plaintiff, being a stockholder and interested in the welfare of the defendant corporation, was anxious to have the second mortgagee protect the title against the sheriff's deed which was about to be issued under the foreclosure sale based upon the prior mortgage; that he was unable to get any satisfactory promise from the parties interested in the second mortgage, and decided himself to protect the title by advancing the money, hoping that those interested in the second mortgage would be willing to postpone their lien, but expecting and replying

only upon the mortgage which the receiver was authorized to give under the order of the Court referred to. In other words, having an interest to protect and believing that the value of the mortgaged property was sufficient to cover both the first and second mortgages, the plaintiff was willing to extinguish the rights of the purchaser at the foreclosure sale, with the understanding that the money advanced by him for that purpose should be secured by a mortgage given by the receiver pursuant to the authority conferred upon him by the order of the Court. This theory is not out of harmony with the allegations of the bill and is, in my judgment, supported by the preponderance of the evidence. [44]

The plaintiff alleges that the receiver did not execute the mortgage, but it is not seriously controverted that the receiver was willing to execute the mortgage and has never declined so to do, and if he had declined the Court in which he is acting would, on being advised of the fact, doubtless have compelled its receiver to perform his obligations and keep his agreements in that respect and execute the mortgage. But it does not appear that any demand was ever made for the mortgage. Upon the other hand, the receiver positively testifies that at all times he was willing, and is still willing, to execute the mortgage. The plaintiff is here contending, however, not that his expectations be realized and that the agreements entered into be kept by the defendants but that he be given a lien which he did not contract for and did not expect to receive. Under the doctrine of equitable assignment or subrogation he seeks to be put in

the place of the mortgagee of the original prior mortgage. It appearing that the complainant contracted for a certain lien and advanced the money in question with the expectation of receiving such lien, namely, the receiver's mortgage, and such mortgages always having been available to him, there is no room for the application of the doctrine of subrogation. It may be true that if the plaintiff had entered into no agreement at all with the receiver or any of the parties interested and, as a stockholder, had advanced to the receiver a sufficient amount to redeem the property, with the expectation of being subrogated, he would be invested with all of the rights of the purchaser at the foreclosure sale. That point, however, it is unnecessary to decide. The money was not advanced under such conditions. As already stated, it was advanced under a certain agreement with the receiver and with certain expectations on the part of the plaintiff, neither of which involved or contemplated a subrogation of the plaintiff to the rights of the purchaser at the sale. [45]

It is true that in one sense the equities are with the plaintiff. If originally he had been put in the place of the purchaser, upon the payment by him of the necessary amount to redeem from the sale, the second mortgagee would in no wise have been prejudiced, and would have no substantial ground for complaint, but upon the other hand it is also true that the plaintiff, being a stockholder in the defendant corporation, and presumably a substantial, if not the largest, stockholder, was equitably under some obligation to see that the debts of the corpora-

tion were paid. Perhaps there was no legal liability, but even so, as a stockholder he had shared in the benefit which the corporation received as a consideration for the indebtedness secured by the second mortgage. Unfortunately the record does not disclose the extent of the plaintiff's interest in the corporation, and it may be that he, indirectly, as a stockholder, received the larger part of the consideration represented by the second mortgage. However that may be, his position in equity is not precisely the same as that of one who, having received no benefit at all, discharges the obligations of another. Moreover, it is not clear that the plaintiff's prayer could be granted without prejudice to rights growing out of the second mortgage. It seems that some time subsequent to the advancement made by the plaintiff the holders of the second mortgage instituted proceedings for the foreclosure thereof, and the decree of foreclosure was entered and the property sold pursuant thereto. Doubtless certain expenses have been incurred, and it may well be that by reason of the foreclosure and sale of the property the subrogation of the plaintiff to the right of the prior mortgagee would give rise to complications highly prejudicial to innocent parties.

For the reasons stated, the bill must be dismissed, and it is so ordered.

[Endorsed]: Filed July 8, 1911. A. L. Richardson, Clerk. [46]

In the Circuit Court of the United States for the District of Idaho, Eastern Division.

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

Decree.

This cause came on regularly to be heard at this term of the court on the eighth day of July, Nineteen Hundred and Eleven, and was argued by counsel; and submitted to the Court and thereupon upon consideration thereof, it is ordered, adjudged and decreed as follows: That the bill herein be and the same is hereby dismissed.

And that the defendants recover their costs herein incurred taxed at \$56.80.

Dated this eighth day of July, 1911.

FRANK S. DIETRICH,

U. S. Dist. Judge.

[Endorsed]: Filed July 8, 1911. A. L. Richardson, Clerk. [47]

In the Circuit Court of the United States for the District of Idaho, Southern Division.

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

In pursuance of an order heretofore made and entered by the Court in the above-entitled cause, appointing Daniel Hamar Special Examiner to take the testimony in said cause, and report the same to the Court, and by agreement of counsel for the respective parties, the witnesses appeared before said Special Examiner on the 11th day of March, 1911, at three o'clock P. M. at the office of Messrs. Hansbrough & Gagon, at Blackfoot, Idaho, J. D. Skeen, Esq., appearing as counsel for the complainant and Messrs. Hansbrough & Gagon and John W. Jones, Esq., appearing for the defendants; whereupon the following proceedings were had:

Stipulation [that Testimony be Taken Before Special Examiner].

It is hereby stipulated and agreed by and between the respective parties, through their attorneys of record, that the testimony in this cause shall be taken at this time in shorthand, by Daniel Hamar, the Special Examiner heretofore [48] appointed by

the Court, at the office of Hansbrough & Gagon, in Blackfoot, Idaho, pursuant to the order of the Court and by agreement of all the parties, and that the same shall be transcribed into typewriting, and certified by said Special Examiner, and that when so transcribed and certified the same shall be considered the testimony in this cause, without the signature of the witnesses to their said testimony.

**[Testimony of Charles A. Hickenlooper, the
Complainant.]**

CHARLES A. HICKENLOOPER, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. SKEEN.)

Q. You may state your name and residence.

A. C. A. Hickenlooper; I reside at Pleasant View, Weber County, Utah.

Q. Charles A.? A. Charles A., yes, sir.

Q. Did you know the Crystal Springs Investment Company, a corporation, incorporated under the laws of the State of Idaho? A. Yes, sir.

Q. What, if any, connection did you have with that corporation?

A. I held, or my son and I together held, 12,000 shares of stock in the Clegg-Hickenlooper Ranch Company, that they were going to exchange; 12,000 shares of that stock to us as collateral on some notes we held. [49]

Q. That is, The Crystal Springs Investment Company was going to transfer 12,000 shares of its

(Testimony of Charles A. Hickenlooper.)

stock for other stock that you had?

A. Yes; that some of the shareholders in that had put up as collateral on notes that we held.

Q. What, if anything, had been done toward making the transfer?

A. Well, Mr. Clegg, who was the Business Manager of the Crystal Springs, wrote me that the 12,000 shares was set aside and they were ready to exchange any time we turned over the Clegg-Hickenlooper Ranch stock.

Q. Well, what property did the Clegg-Hickenlooper Ranch Company have? What were the assets of the corporation?

A. They had the same ranch property, which was afterwards reincorporated. After we sold our interest it was reincorporated under the name of the Crystal Springs Investment Company.

Q. So that the assets of the two corporations were the same? A. Yes, sir.

Q. And was the property referred to, the property described in paragraph No. 3 of the complainant's bill?

A. Yes, sir, I suppose it is—if it is that bill that I read in your office.

Q. So I understand then, that the two corporations (the Clegg-Hickenlooper Ranch Company and the Crystal Springs Investment Company) held the same assets? A. Yes, sir.

Q. And the Crystal Springs Investment Company was really, in effect, a reincorporation of the Clegg-Hickenlooper Ranch Company?

(Testimony of Charles A. Hickenlooper.)

A. Yes, sir. [50]

Q. Is that the interest that you held on or about the 30th day of June, 1909? A. Yes, sir.

Q. What other, if any, interest did you have in the affairs of The Crystal Springs Investment Company?

A. Well, I was interested in the—oh, what was the name of that company?

Q. The Interstate—

A. The Interstate Realty Company; I was interested in that, to the extent of about 6,000 shares, and had turned my interest in that over to my son, as manager of that interest to look after.

Q. What connection was there between the Interstate Realty Company and the Crystal Springs Investment Company?

A. The Interstate Realty Company held some stock in The Crystal Springs Investment Company, and I was a stockholder in that.

Q. Did you know of the mortgage—

Mr. HANSBROUGH.—Just a moment, now. I am going to object to that last question and move to strike the answer out. I object to the question relative to the Interstate Realty Company—is that it?

WITNESS.—Yes, sir.

Mr. HANSBROUGH.— —and move all of that evidence be stricken out, as incompetent, irrelevant and immaterial.

Mr. SKEEN.—Q. Did you know of the mortgage from Thomas G. Clegg and wife to S. J. Rich, for the sum of \$1400.00, covering a part of the property owned by the Crystal Springs Investment Company?

(Testimony of Charles A. Hickenlooper.)

A. Yes, sir.

Q. And did you know of the proceedings being instituted for the foreclosure of that mortgage? [51]

A. Yes, sir.

Q. And did you know of the certificate of sale, and the date of the maturity of the certificate, entitling the holder to a sheriff's deed to the property? A. Yes, sir.

Q. I will ask you if you also knew of a mortgage from The Crystal Springs Investment Company to Thomas G. Clegg, for the sum of \$2,080.00?

A. Yes, sir.

Q. Did you know the defendant T. H. Christy on or about the 28th day of June, 1909? A. Yes, sir.

Q. And Mr. Hart, of the Brown-Hart Company?

A. Yes, sir.

Q. I will ask you whether or not you had a conversation with Mr. Christy on or about the 28th day of June, 1909? A. Yes, sir.

Q. You may relate the conversation.

A. I think, though, that it was the 29th or 30th when I had the conversation with him.

Q. The 29th? A. Either the 29th or 30th.

Q. You may relate the conversation and the circumstances leading up to it.

Mr. HANSBROUGH.—We will object to that; that is, at this time. You are referring to what Mr. Skeen?

Mr. SKEEN.—Well, I will add that, if you insist. Some attorneys object if it is added.

Q. In reference to the redemption of the certifi-

(Testimony of Charles A. Hickenlooper.)

cate issued by the Sheriff in the foreclosure of the mortgage of S. J. Rich?

A. Are you ready for the question?

Q. Yes, you may answer that. [52]

A. Well, you just want the conversation that I had with Mr. Christy?

Q. With Mr. Christy first, with reference to the redemption of the Rich mortgage.

A. The receiver (Mr. D'Arcy) and I went around to Mr. Christy, to see if he was going to protect their interest in that property or not.

Mr. HANSBROUGH.—He is asking for the conversation Mr. Hickenlooper. It wouldn't make any difference what you did. We object to that, and move to strike it out.

Mr. SKEEN.—That may go out. Just relate the conversation with Mr. Christy.

A. I asked Mr. Christy if he was going to take care of that property, or whether he was going to let it go by default, and he said he was going to let it go; that he had other collateral for his security, and wasn't sufficiently interested to take care of it. I then asked him if I would take care of it if he would allow my mortgage to take first place, and his remain just as it was then, and he said he thought that could be arranged, providing the Brown-Hart people that were interested in the deal were willing, and he advised me to see them in regard to it. That was about the sum and substance of our conversation. We talked quite a while, but that was about the sum and substance of it.

(Testimony of Charles A. Hickenlooper.)

Q. *The* what did you do after that conversation?

A. We then went around to the Brown-Hart store, and met Mr. Brown I believe it was. I hadn't met him before or since, but I think it was Mr. Brown, if I remember right—one of the interested parties.

Q. One of the members of the Brown-Hart Company?

A. Yes, and had a similar conversation with him, and told him what Mr. Christy had said in regard to the matter, and asked him if they would be willing to the same, and he said— [53]

Q. Willing—now then, just complete that—willing to what?

A. Willing, providing I redeemed this property, that my mortgage should take the first place, or stand just where it did, and their mortgage keep the same place as it was at the time; and he said he thought that that could be arranged, but that there were others interested in it, but if Mr. Christy was willing he thought it could be arranged; something to that effect.

Q. What did you do after that conversation?

A. I took the next train for Ogden to raise the money.

Q. Now, what was the date of the conversation?

A. Let me see—there would be 31 days in that month, wasn't there?

Q. Thirty days in the month.

A. Thirty days? Well, that would be on the 29th, then, because I took the midnight train back to Ogden and arranged for the money with the Pingree Na-

(Testimony of Charles A. Hickenlooper.)

tional Bank and had it phoned to this bank over here—I don't remember the name of the bank.

Q. The Blackfoot State Bank?

A. The Blackfoot State Bank, I think it is.

Q. Who was the cashier of that bank?

A. I think it was a man by the name of Jones, I believe that was the man,—

Q. D. R. Jones?

A. —that Pingree had the conversation with over the phone. I heard the conversation.

Q. Now, what was the time of the conversation, with respect to the date of the maturity of the certificate of sale of the land covered by the Rich mortgage? A. We just had fifteen minutes' time—

Q. No, the first—the conversation between you and Mr. Christy, and you and Mr. Brown, of the Brown-Hart Company? [54]

A. It was the day before the redemption expired—the time of redemption expired.

Q. And you may continue, and relate what you did after returning to Ogden.

A. I returned to Ogden and arranged with Mr. James Pingree, of the Pingree National Bank, for the money, and had him phone it to Mr. Jones, of the bank here.

Q. Did you hear the conversation over the telephone? A. Yes, sir.

Q. You may relate it.

Mr. HANSBROUGH.—Just a moment, now. That would be incompetent, and we object to it as incompetent, because he doesn't know. He hasn't

(Testimony of Charles A. Hickenlooper.)

shown that it was Jones he talked to. We object to that as incompetent for any purpose; that is, the conversation over the phone.

Mr. SKEEN.—You may go ahead and relate it.

A. Mr. Pingree phoned the amount of money—

Q. Well, just state what he said.

A. He told him to turn over that amount of money—

Q. Well, now, the amount?

A. I think it was \$2,050.00, if I remember correctly. There was another amount that came in after that, that has confused me just a little. I believe that that was the amount. And he told him to turn over that money when he received a first mortgage on that property.

Q. I will ask you whether or not you had a conversation with the receiver, Mr. W. J. D'Arcy, on the 29th day of June, 1909? A. Yes, sir.

Q. Respecting the certificate of redemption of the Rich mortgage? [55]

A. Yes, sir, coming to Blackfoot, I went direct to his office.

Q. You may relate it.

A. And he asked me if I could take care of that mortgage, and I told him I thought I could, providing I could be protected; and he said that unless we could get Mr. Christy and the Brown-Hart people to consent to it, that as soon as a new mortgage was made, that the second mortgage that they held now (the blanket mortgage) would take first place; and I told him that under those conditions I wouldn't

(Testimony of Charles A. Hickenlooper.)

be interested in it at all; I wouldn't take any such chances as that; and he said, "Well, we had better go around and have a talk with them," and that is what led up to us going to Mr. Christy and Mr. Brown.

Cross-examination.

(By Mr. HANSBROUGH.)

Q. Did Mr. Christy, at the time you say you went over there to Mr. Brown, tell you that you might have a first mortgage on that?

A. He said he thought that that could be arranged, providing that the Brown-Hart people were willing, and he said, "You had better go around and see those people."

Q. Now, did you ever see him after that about this? A. No, sir.

Q. You never saw him?

A. I never saw him afterwards.

Q. You then went to Brown-Hart? A. Yes, sir.

Q. And that is the only conversation you had ever had with Christy? A. Yes.

Q. Now, you spoke, you say, to Mr. Brown?

A. Yes, sir. [56]

Q. And it wasn't Mr. Hart here? (Indicating Mr. Charles L. Hart.)

A. No, sir, I don't think so. I never saw the man.

Q. Describe Mr. Brown.

A. Well, the man is vacant in my mind. I haven't seen him but the once, and it is nearly two years since. I just was introduced to him, but I didn't

(Testimony of Charles A. Hickenlooper.)

recognize this gentleman as being the one, although I didn't remember which one of the two it was.

Q. Where did you meet him?

A. At the store.

Q. Which store? A. At the Brown-Hart store.

Q. That is the store over here? (Indicating.)

A. Down in the center of the block, as I remember it. That is the only time I was ever in the store.

Q. And you say now that he told you practically the same that you have testified that Christy told you? A. Yes.

Q. That it might be arranged?

A. Yes, that he thought it could be arranged.

Q. Well, did you ever have any further talk with Mr. Brown about that? A. No, sir.

Q. Well, then, you made no arrangement with them? You didn't complete that arrangement, did you?

A. Well, you see, the time was so limited that I had to get right back to Ogden, because the next day the redemption expired.

Q. That is true; but you made no such arrangement, did you, with either Brown or Christy? [57]

A. Well, not any further than that.

Q. You never had any talk with Mr. Brown afterwards?

A. I had a man here that was looking after my interest to do that.

Q. Afterwards?

A. Yes, sir; I left a man here in the town.

Q. Well, you were not here? A. No.

(Testimony of Charles A. Hickenlooper.)

Q. And you don't know what your man did if anything? A. He is here to testify.

Q. Oh, your man is here? A. Yes, sir.

Q. But so far as you are concerned personally, you never made any further arrangement?

A. No, sir.

Q. With either Brown, of the Brown-Hart Company, or with Mr. Christy? A. No, sir.

Q. Or anyone else in that bank? A. No, sir.

Q. Or anyone else in that store? A. No, sir.

Q. Did you consider, at the time that you advanced that money, that you had completed an arrangement with the Brown-Hart people and Christy?

A. I thought that it would go through along the lines that we had talked. I certainly did, or I wouldn't have turned the money over.

Q. But you didn't think, and you knew at that time that you hadn't completed any arrangement, didn't you?

A. Well, not right definite. Now, there was only one [58] of the firm of the Brown-Hart Company at the time at the store.

Q. And as I understand you now, that all you claim is that you and Mr. D'Arcy went to the First National Bank, and there spoke to Mr. Christy, and asked him if he would give you a first mortgage against that property, and he take a second mortgage—

A. Well, he had a second mortgage at that time. I just asked him—

(Testimony of Charles A. Hickenlooper.)

Q. Well, just a moment. I am trying to get at now what your understanding was—and he take a second mortgage, or hold a second mortgage, in case you should advance the money to redeem that property from the foreclosure sale? A. Yes, sir.

Q. And Mr. Christy told you—Now, that is what you asked him? A. Yes, sir.

Q. And Mr. Christy told you he thought it could be arranged? A. Yes, sir.

Q. That is all he told you?

A. Yes, sir; and he advised me to go and see the Brown-Hart people and see if they were willing, and he said if they was he thought it could be arranged all right.

Q. And you went to see the Brown-Hart people?

A. Yes, sir.

Q. And saw Mr. Brown? A. Yes, sir.

Q. And Mr. Brown told you that he thought it could be arranged, did he? Now, just what did he say?

A. Well, he told me very similar to what Mr. Christy did; if Mr. Christy had no objection he thought they could arrange that part all right. [59]

Q. And you didn't go back to either Mr. Brown or Mr. Christy, to see whether they would arrange it or not?

A. Well, I think Mr. Brown stated that his partner wasn't there at the time, and he would have to talk it over with him, or something to that effect.

Q. Then, he couldn't do anything until he would see his partner? A. No.

(Testimony of Charles A. Hickenlooper.)

Q. Now, you also stated, Mr. Hickenlooper, as I remember it—as I have a note of it—that Mr. Christy told you that he wasn't going to take any action in the matter? A. Yes, sir.

Q. That was at this same visit? A. Yes, sir.

Q. And Mr. D'Arcy was with you at that time, was he? A. Yes, sir.

Q. He heard that conversation, did he?

A. Yes, sir.

Q. And aside from that you have never had any other conversation with them? A. No, sir.

Q. You are a large stockholder in The Crystal Springs Investment Company, aren't you, and were then? A. Well, I *were* the way that I stated it.

Q. Well, the way that you stated it. I understand you to say that the assets of these two companies were the same, and that you owned about \$12,000 worth of stock there?

A. Well, I had a mortgage that was secured by about that much, as collateral.

Q. Oh, you had a mortgage? A. Yes. [60]

Q. Not on their property? What was that mortgage on? Not on the Crystal Springs property?

A. Well, it wasn't a mortgage; it was some notes that were secured.

Q. You had some notes from some of the stockholders of that company?

A. Yes, secured by stock.

Q. And by that certificate of stock of that company as collateral security? A. Yes, sir.

Q. That is all the security you had?

(Testimony of Charles A. Hickenlooper.)

A. Yes. That is, any further than I was interested in the Interstate Company, that held an interest in there, too.

Q. The Interstate Company? Now, let us get that straightened out. The Interstate Company, as I understand, had stock of the Crystal Springs Company? A. Yes, sir.

Q. And you were interested also in the Interstate Company? A. Yes, sir.

Q. Now, you had some stock of the Interstate Company—owned it? A. Yes, sir.

Q. Well, was that up with you as collateral, or did you own the stock? A. I owned the stock.

Q. You owned the stock? A. Yes, sir.

Q. Now, how do you figure that stock that you owned of the Interstate Company? If you held that stock, it being an independent corporation, how did it effect The Crystal Springs Company? [61]

A. Because they held stock in the Crystal Springs Company.

Q. The Interstate Company did? A. Yes, sir.

Q. And you, as a member of the Interstate Company, had an interest in that stock held by the Interstate Company of the Crystal Springs Company?

A. Yes, sir.

Q. Well, you were virtually and really, from the collateral that you held and the stock that you owned in the Interstate Company, a large stockholder in the Crystal Springs Company, weren't you?

A. I considered I was, yes, sir.

Q. The lands described here were at that time

(Testimony of Charles A. Hickenlooper.)

owned by the Crystal Springs Company?

A. Yes, sir.

Q. And are yet, aren't they?

A. Yes, sir, I believe so.

Q. And these two mortgages cover that particular land; isn't that true? A. I think so.

Q. Those lands are worth considerable in excess of those mortgages, aren't they? A. I don't know.

Q. Well, what is your opinion about it?

A. I haven't seen the property for a good while, and I understand that the alkali is raising on them; so I don't know. Since that big canal, I understand that the alkali is raising. That would depreciate the value some.

Q. Well, you had about \$12,000.00 of that stock, didn't you say? [62] A. Yes, sir.

Q. Do you consider that good collateral security?

A. Well, I don't know how good I considered it. I accepted it at the time the deal was made.

Q. Do you remember what that company was stocked for?

A. I believe it was incorporated for \$60,000.00, if I remember right.

Q. Now, the indebtedness, as I understand, of these two mortgages, is less than \$4,000.00?

A. I don't remember.

Q. Right around \$4,000.00, with the interest?

A. I don't remember the exact amount.

Q. And you felt pretty safe, didn't you, Mr. Hickenlooper, knowing the value of that property, knowing it as you did, paying off this mortgage, and you

(Testimony of Charles A. Hickenlooper.)

was doing it for the purpose of protecting the stock that you held at that time, didn't you?

A. Well, I felt safe, providing I got what I was led to believe I would get; but I wouldn't have been interested in it any other way.

Q. Would you have let your stock that you had—that collateral stock—go?

A. I certainly would.

Q. For \$2,000.00? A. Yes, sir.

Q. Do you mean to say now—

A. Of course, there is other lands in the Crystal Springs Company; you understand that?

Q. Yes, I understand. And you think that \$2,000.00 at that time, which is the value of that mortgage—that is, I think you advanced \$2,012.00 the pleading states—

A. I was under the impression that it was \$2,050.00. I wish you would correct that Mr. Clerk, if it is agreeable. I [63] believe you will remember that I wasn't quite clear. I had to raise some money afterwards, and I was confused or mixed a little on the two.

Q. When did you make a demand on the receiver here, if at all, for a first mortgage on this property?

A. Well, when I went away from here. When I left that night I left a little money with the receiver to pay for the recording of that, with the understanding that as soon as it was made it would be recorded, and he would forward it down to me, and I waited a number of days and then came back up.

Q. Well, did you make a demand on the receiver

(Testimony of Charles A. Hickenlooper.)

for a first mortgage on that property?

A. Well, I made a demand when I came back, when it had not been complied with as it was understood that it would be when I left.

Q. Well, when did you come back?

A. Well, I think it was about ten days afterwards, as near as I can tell.

Q. Where did you make that demand?

A. I went over to the office of the receiver, to know why the mortgage had not been made out, and he referred me to his attorney, Mr Jones, and I went over there, and Mr. Jones said he had been out of town a great deal of the time since, and that it was a little complicated, and so on. I didn't get but very little satisfaction on my trip that time.

Q. Well, what did Mr. D'Arcy say to you at that time? As I understand you to say now, that there was a positive agreement between you and Mr. D'Arcy that you was to have a first mortgage?

A. Well, of course, Mr. D'Arcy was—I don't remember just what he did say in regard to that. He said it was complicated [64] and at that time he asked if I didn't think it would be better for me to take a receiver's certificate, and I told him that I would rather it would stay as it was for a little while, and see if we couldn't get that as we formerly agreed, or along the lines that we were formerly working on.

Q. That is when you came back? A. Yes, sir.

Q. Well, did Mr. D'Arcy—Now, do I understand you to say that Mr. D'Arcy positively promised you—you allege that, and I am trying to get at it—

(Testimony of Charles A. Hickenlooper.)

promised you at the time you advanced this money, that you should have a first mortgage on that property?

A. Well, Mr. D'Arcy said that he would do all he could in his power for me to get that.

Q. Then, you didn't have any agreement with Mr. D'Arcy that you should have, did you?

A. Well, I don't know whether you would call that an agreement or not. He seemed more than anxious for me to get it.

Q. Well, you know, Mr. Hickenlooper, whether or not he agreed to give it to you, don't you?

A. Well, I believe I have made myself plain along those lines, haven't I?

A. Not as far as your pleading—that is what I am asking for. You allege that you and Mr. D'Arcy entered into an agreement whereby you were to have a first mortgage upon that property. Is that true or not true?

A. Well, it is true, along those lines that I have stated.

Q. That is as far as you want to go on that? You don't want to say that that is true? You say along those lines. Now let's cut loose lines out and answer that question, Mr. Hickenlooper, if you can. Is that true or not true? We will say [65] nothing about those lines. I want to know if you had such an agreement with him or not.

A. Well, I told you what Mr. D'Arcy told me in regard to it. Now, he and I were working along together along those lines, with that understanding,

(Testimony of Charles A. Hickenlooper.)

and the other people gave me to understand that they would do that; and that is the way I left it.

Q. And that was all that was ever said, that Mr. D'Arcy was to do anything he could do to get your first mortgage? A. Yes.

Q. And he didn't promise you that he could or that he would, did he?

A. Well, of course, it would depend on the others staying with and doing the right thing with me on the other; that would have to depend on that.

Q. Then, you figure that the other people (Christy and Brown) actually promised you a first mortgage?

A. Well, they gave me to understand that I could get it. I'll tell you. Neither of them had interest enough to save this property, and all I asked them to do was to just let their mortgages take their places as it then stood. They were not losing a thing. Now, if it had went by default they wouldn't have had anything then, and they did have a second mortgage left if they had done as they gave me to understand that they would do.

Q. Well, but it might not have been that way. They might not take that view of it. If it had gone by default, and a deed had been given to Mr. Rich for the property, if those things had all happened, that the title would have passed to Rich?

A. Yes, sure.

Q. And they wouldn't have had anything. But then you don't know positive that that would have been the result, do you?

(Testimony of Charles A. Hickenlooper.)

A. Well, I think I do. When the time is up within [66] fifteen minutes when that money gets here, it looks very conclusive that they didn't intend to do anything themselves to help it; and they both stated positively to me that they wouldn't.

Q. Now, when were you solicited by Mr. Christy to take up that mortgage over there—to redeem that property?

A. Oh, I was solicited two or three times by letter.

Q. By Mr. Christy? A. Yes, sir.

Q. Have you those letters?

A. I have one of them with me.

Q. Let's see it.

(The witness produced a letter from his pocket, handed it to Mr. Skeen, who examined it, and then handed it to Mr. Hansbrough, who read said letter.)

Mr. HANSBROUGH.—Q. Haven't you made a mistake in the letter you handed me? This letter as I read it, doesn't solicit Mr. Christy. Did you read this letter carefully? (Handing same to witness.)

A. It doesn't what?

Q. Doesn't solicit Mr. Christy. That was my question—when you were solicited. You claim that you were solicited two or three times by Mr. Christy.

A. I may have been mistaken in the letter. (Examining other letters.)

Mr. HANSBROUGH.—(To Mr. W. H. HICKENLOOPER.) What is the date of that letter?

Mr. W. H. HICKENLOOPER.—April 1st, 1910.

WITNESS.—There is the letter, but it is written by you people. (Handing letter to Mr. Hans-

(Testimony of Charles A. Hickenlooper.)

brough.) I was thinking that was from Mr. Christy.

Mr. HANSBROUGH.—Yes; I see that I dictated this letter [67] myself. Now, have you seen this, Mr. Skeen?

Mr. SKEEN.—No, I haven't.

Mr. HANSBROUGH.—Q. Is that the letter you referred to, Mr. Hickenlooper, as soliciting you to do that thing?

A. Well, there was either two or three letters that came to me at different times. Now, soon after this—soon after I put up the money and secured that property—then Mr. Christy began to crowd me, by threatening that he would foreclose on the property if I didn't take care of his end of it as well as the other, and we exchanged a number of letters along those lines—two or three different letters.

Q. You would not say now, Mr. Hickenlooper, that this letter here, which of course was written by this office—I see it is “G. F.”—Mr Gagon evidently dictated that—I thought it was myself—it was written by this office—dictated by the junior member of this firm—that this letter is soliciting you to take up that first mortgage, and that he would take a second mortgage? You wouldn't say that that letter—

A. Oh, no. It was crowding me, that they would foreclose on that property and I would lose my money if I didn't take care of them, on top of what I had already done.

Q. Now, the question I asked you—I did it because I take it from your bill of complaint here,

(Testimony of Charles A. Hickenlooper.)

where you say that you were solicited by Christy and his predecessors in interest to take this money—to advance this money—and that he would take a second lien. Now, that is your pleading. Now, “soliciting,” of course you understand what that means—they asked you—we asked you—to do that. Now, when did he ask you? A. Mr. Christy?

Q. Yes. A. Well, Mr. Christy didn’t ask me.

[68]

Q. He never at any time asked you— A. No.

Q. —to take that up?

A. No; I went to him about that.

Q. Then, you were not solicited by Mr. Christy to— A. Does the complaint so state?

Q. Yes. Well, I will read here—just a moment: “Your orator further says that he was solicited by the said receiver” (that is Mr. D’Arcy) “and by defendant T. H. Christy, his predecessors in interest and the stockholders and subsequent lien claimants of the real estate described in paragraph No. 3, to advance the said sum of \$2500.00 with which to redeem said real estate from the sale to S. J. Rich.” That is your allegation. Is that true or not true?

A. Well, that part of it isn’t.

Q. That isn’t true?

A. I didn’t so understand that part of it, reading it. Mr. Christy never solicited me—I went to him, as I stated.

Q. You see by this letter of date of April 1st, 1910, Mr. Christy positively there denies that he ever agreed with you that you could have a first lien as

(Testimony of Charles A. Hickenlooper.)

against his mortgage, don't he?

A. Yes; and he also states that at the time I went to him that the money had already been turned over by me. So his denying that might be just as truthful as the other part.

Q. Oh, yes; if a man wanted to take the position that Mr. Christy wasn't telling the truth, he may do it as well on the one ground as on the other.

A. Well, of course he could. Well, he states that in that letter that I had already turned the money over.

Q. Now, I want to ask you about this just a moment; Didn't Mr. Christy say to you at the time that you talked with him [69] at the bank that on account of the Brown-Hart people—didn't he first, I will say, refer you to Mr. John W. Jones, and say that if the Brown-Hart people, who were jointly interested with the bank (that is, the First National Bank), would agree to substitute your loan as a first lien, as to their interest, he would do likewise? Did he say that to you? A. Yes.

Q. I believe you testified to that? A. Yes.

Q. Now, then, you never went back, but you went to see the Brown-Hart people? A. Yes, sir.

Q. You never knew what happened after that, and you never saw Mr. Hart about it?

A. No, sir, I don't believe I saw this gentleman. (Indicating Mr. Charles L. Hart.)

Q. And his statement here, that Mr. Hart, within a few minutes after you were there, called him up over the phone and told him they wouldn't do any-

(Testimony of Charles A. Hickenlooper.)

thing of the kind; when was that called to your attention before?

A. Well, when he wrote it there. That was the first intimation that I had of it.

Q. Now, why didn't you go back to see Mr. Christy, Mr. Hickenlooper, after having that conversation with him, after you had seen Mr. Hart or Mr. Brown?

A. Well, for this simple reason: There was nothing right definite, because Mr. Hart wasn't there at the time, and all that I could have done would have been to have gone back and told him just what Mr. Brown said, and we couldn't have come to any definite conclusion, on that, could we?

Q. Do you know where Mr. Hart was at that time?
[70]

A. I don't remember just what he did say in regard to it, but I am under the impression that he said he was out of town. Now, I wouldn't be positive on that. I know we didn't try to find him, because—for some reason.

Q. Well, you were not solicited, either—not by Mr. Christy, and you were not solicited—

A. No. That was an oversight of mine. When the complaint was read to me I didn't notice that that allegation was made in there.

Q. And you were not solicited by Mr. Brown, of the Brown-Hart Company, either? A. No, sir.

Q. Neither one of them? A. No, sir.

Q. You just thought, Mr. Hickenlooper, didn't you, that there was a lot of property down there,

(Testimony of Charles A. Hickenlooper.)

that if this mortgage or sale should take place that the title to all that property would pass out of the hands of the company, and that that collateral that you held wouldn't be good, didn't you—if it did—for anything?

A. Well, it would lessen the value of the holdings.

Q. Your collateral would not have been good for anything?

A. It wouldn't have been as valuable as it would if the property didn't pass.

Q. And you simply took a chance, and went in there and paid your money to redeem that mortgage, to save the property for the company?

A. Yes, sir, with that understanding. [71]

Q. And the company still has that property?

A. I believe so.

Q. You realize, Mr. Hickenlooper, that you have, as against every other claim of the stockholders, you have a first lien—not against this Mr. Christy mortgage, but every other claim, for your money, don't you?

A. No; it isn't right clear to me, Mr. Hansbrough, just what shape it does stand in.

Q. Well, I say, if you have taken up the indebtedness of this company—the mortgage—you realize that the stockholders of this company would owe you for that, and that you would have a preferred claim against the company, don't you, for that amount of money, against everything except this mortgage? A. Well, I think I had ought to.

Q. Well, you would. I say, I am asking you, as

(Testimony of Charles A. Hickenlooper.)

a matter of law, you would as against every lien that had not attached prior to that time?

(No answer.)

Q. Then, Mr. Hickenlooper, if Mr. Christy never made any agreement with you, and never solicited you, then he never violated any agreement, did he?

A. Yes. He led me to understand that it would be fixed that way.

Q. Well, from what you have testified here to, you would not consider that and don't now undertake to say that there was an agreement, do you?

A. Well, I don't know which way you would take it.

Q. Well, now, let's look at it this way just a minute, Mr. Hickenlooper: According to your statement, Mr. Christy told you that if the Brown-Hart people would do that, they would do it?

A. Yes, sir. [72]

Q. And according to the statement made by Mr. Christy to you in his letter, he tells you that the Brown-Hart Company refused to do it.

A. Yes; but he never notified me of that—

Q. But you never went back to him to tell him the Brown-Hart Company would, did you?

A. No, I don't think we went back.

Q. Now, if that were true, and the Brown-Hart Company said to you, "We won't do that," then you had no agreement with him, did you?

A. I'll tell you, Mr. Hansbrough. I was very busy all that day. I was expecting a brother in law down here from the St. Anthony country to furnish

(Testimony of Charles A. Hickenlooper.)

that money, and I had quite a time to locate him, and then found out that he was away from home, and it kept me extremely busy, and I had a man here (Mr. Walker) that was going to look after my interests the next day, and he is here prepared to testify, and I really didn't have the time to go and cover the ground as I would have liked to have done; but the view I took of it was this: That if I were in the place of the bank and the Brown-Hart people, under a condition of that kind, where they wouldn't do anything for themselves at all—they felt that they had other security—I took this view of the case, if I were in their place I would have been willing to do that way, and I believe I would under those conditions, because if I didn't put up the money it would have went by default, as far as either firm was concerned. And now that is the view and that is the grounds I was working on.

Q. Now, just a moment. You speak of other security that they had. What other security did they have?

A. This is a blanket mortgage, as I understand, on that whole big ranch for \$2,000.00.

Q. Well, it is on this land, isn't it? [73]

A. Well, it is a blanket mortgage of the whole thing—160 acres off here at Taylor and 400 acres, besides that 330. It was a blanket mortgage of the whole concern. Now, that was my understanding, that they had a blanket mortgage over the whole big concern.

(Testimony of Charles A. Hickenlooper.)

Q. Well, that was just by hearsay, Mr. Hickenlooper?

A. Well, yes, it was hearsay. I haven't seen the mortgage.

Q. And then that is the reason for your statement now, that they had other security that they might foreclose on in the place of this property—the reason that they wouldn't redeem?

A. Yes. Now, the both firms told me that during my conversation.

Q. Now, how long was it after the ten days—I understand you to say that about ten days after this happened you came up and demanded your mortgage of Mr. D'Arcy. Did he refuse at that time to give you a mortgage upon that property?

A. No, sir. He said that Mr. Jones had been away from home, and referred me to Mr. Jones.

Q. Did you go to see Mr. Jones? A. Yes, sir.

Q. Did Mr. Jones refuse to give you a mortgage?

A. Mr. Jones—I had quite a time to get to see Mr. Jones. He was very busy that day, and I didn't get to see him until—I got in about nine o'clock in the morning, and I didn't get to see him until very late in the afternoon; and he stated that there was \$120.00 more due on that, and Mr. D'Arcy told me the same thing, and that they had made a mistake in figuring up, and he gave as a reason that he hadn't, that he had been out of town a good deal, and that there was still this \$120.00 still due, and I made them a check for \$120.00. And that is how I became confused.

(Testimony of Charles A. Hickenlooper.)

Q. That was after you came back the ten days afterwards? [74]

A. Ten days or two weeks; something like that.

Q. Well, did they offer you a mortgage at that time, or refuse to give you one?

A. No, Mr. D'Arcy offered me a mortgage, or a receiver's certificate, just which I wanted; but by that time it had developed that these people refused to allow it to take first place, by the time I came back.

Q. Then, you haven't demanded a mortgage since?

A. Well, I told Mr. D'Arcy that I believed I would just as soon it would go along as it was until we could get some understanding in regard to it.

Q. You realize that if you ask Mr. D'Arcy for a mortgage upon that property he will give it to you, don't you?

A. I think he would—a second mortgage.

Q. Yes, that is, that is the best he could do, would be to give you a second mortgage?

A. I understand that. I am not blaming him.

Q. Now, Mr. Hickenlooper, let me ask you this question: At the time that you were talking with Mr. D'Arcy about this first mortgage proposition, isn't it a fact that he said to you, "Now, this property—we haven't the money, of course, but this property will be ample security for you, and you understand there is another mortgage held by the Brown-Hart people and Christy on this property, and that if you redeem this property, that you do it knowing that that mortgage must be taken care of?" Didn't

(Testimony of Charles A. Hickenlooper.)

he tell you that?

A. He said like this: He said, "Now, unless they will agree to that, as soon as you pay this mortgage their mortgage takes first place," and I said, "Under those conditions I wouldn't be interested in it," and he suggested that we go and see them in regard to it. [75]

Q. Well, didn't he tell you at that time that the security was ample if you did that?

A. No, he didn't.

Q. He didn't?

A. Mr. D'Arcy was very fair in regard to that. He says, "I wouldn't advise you," he says,—now here was the words he said: "I wouldn't advise a man that wasn't interested at all to take a chance on that; but," he says, "you have got big interests here, I suppose, anyway," and he said, "Of course, you will have to use your own judgment; but," he says, "I wouldn't advise an outside man to come in and take a second mortgage on that property." He says, "I have been over it," and he spoke at the time, he says, "The alkali is raising on the property."

Q. Well, your "big interests" you referred to were your interests in that company, wasn't it?

A. It was in the company—in all the ranch property.

Q. Well, how much more property has that company got down there?

A. There is 400 acres of deeded land adjoining on to that.

Q. 400 acres in addition to this— A. Yes.

(Testimony of Charles A. Hickenlooper.)

Q. —331 here? A. Yes.

Q. That property is worth \$6,000.00 or \$8,000.00, isn't it, at the very least? A. Which?

Q. This piece of property?

A. Well, I stated I didn't know the value of the property.

Q. Well, you are in the real estate business, aren't you? [76] A. No, sir, I am in the fruit business.

Q. You haven't had anything to do with real estate? A. No.

Q. You have no idea as to the value of that property? A. A very small idea.

Q. What value—well, of course, if you have little idea, and practically no idea, your evidence wouldn't be worth anything. A. No.

Redirect Examination.

(By Mr. SKEEN.)

Q. Mr. Hickenlooper, referring to the bill of complaint, the 10th paragraph, where you say that you were solicited. Do you think that is too strong a word? A. I do, yes, sir.

Q. And what you mean is that you went to Mr. Christy, and Mr. Christy said that they had other security, and would not protect the property by taking up the S. J. Rich mortgage, and they thought it would be all right to make your mortgage first, provided it was all right with the Brown-Hart people?

A. Yes.

Q. And that was the extent of your conversation with Mr. Christy? A. Yes, sir.

Q. Then, as I understand you, the statement that

(Testimony of Charles A. Hickenlooper.)

you made, that they had other security, wasn't altogether hearsay; it was a statement by Christy and the Brown-Hart people? A. Yes.

Q. What did you say with respect to furnishing money and taking a second mortgage, when Mr. D'Arcy told you that he couldn't give you a first mortgage without the consent of these parties?
[77]

A. I told him that I would rather it would stay as it was.

Q. That is, not advance the money and take a second mortgage? A. Oh—you mean at the first?

Q. Yes, at the first.

A. I told him that I wouldn't be interested in it, if it couldn't take its place.

Q. That is, interested in advancing the money?

A. No.

Q. Now, about ten days after the money was advanced and you came up, you say that Mr. D'Arcy was willing to give you a mortgage, but it was a second mortgage? A. Yes.

Q. Second to the mortgage of Christy, or—

A. —First National.

Q. —or First National Bank, and the Brown-Hart Company? A. Yes, sir.

Q. Do you know what connection there was between Mr. Christy and the First National Bank?

A. Which is the First National Bank; that is where Mr. Christy is?

Mr. HANSBROUGH.—Yes, that is the First National.

(Testimony of Charles A. Hickenlooper.)

Mr. SKEEN.—What position, if any, did Mr. Christy hold in the bank?

A. I understood that he was cashier.

Q. And did he tell you so?

A. No; I don't know that that question was sprung.

Q. Now, referring to the other property, I will ask [78] you whether or not it was mortgaged? That is, the other property of the Crystal Springs Investment Company? A. Yes.

Q. To whom?

Mr. HANSBROUGH.—Well, just a moment now. What is the object of that, Mr. Skeen?

Mr. SKEEN.—Well, you went into it, and it is to give an idea of the condition of the other property.

Mr. HANSBROUGH.—Well, I didn't say anything about that other property being mortgaged.

Mr. SKEEN.—No, you didn't; but you brought out the fact that there was other property, leaving the inference that it was clear, and that the Crystal Springs Investment Company was solvent. The purpose is to show that the property was heavily mortgaged.

Mr. HANSBROUGH.—The balance of the property?

Mr. SKEEN.—Yes.

Mr. HANSBROUGH.—Well, I think I shall object. That is, I don't think the inference could be drawn as far as I went. It wasn't my purpose; and I object to that as incompetent.

Mr. SKEEN.—Now, you may answer with respect

(Testimony of Charles A. Hickenlooper.)

to mortgages on the other property.

A. The other property was heavily mortgaged.

Q. And to whom, and in what amounts?

A. Well, now, I don't know that I can tell you.

Q. Do you know of a mortgage to the Salisbury Company, in Salt Lake?

Mr. HANSBROUGH.—Well, just let him answer if he knows.

WITNESS.—Yes, the Salisbury; I have heard that spoken of a number of times. There was Salisbury had a mortgage on it, and I believe someone else had a mortgage. I think there was two mortgages, if I remember right, on the 400 acres. [79]

Q. Would you know the name of the mortgagee if it was mentioned—Standrod & Company?

A. Standrod, yes, because I went to the bank that same day and talked with them.

Q. Now, what was the total amount of these two mortgages?

A. I think the Standrod mortgage was either \$12,000.00 or \$12,500.00, and the other either \$5,000.00 or \$7,000.00. That is to the best of my recollection; but it isn't very clear to me.

Mr. HANSBROUGH.—Q. You are not positive about that?

A. I haven't had much to do with it. My son has been looking after my interests.

[Testimony of John Walker, for Complainant.]

JOHN WALKER, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. SKEEN.)

Q. What is your name? A. John Walker.

Q. Where do you live?

A. Ogden, Weber County, Utah.

Q. Did you know of the Crystal Springs Investment Company in June, 1909? A. Yes, sir.

Q. And did you know Mr. T. H. Christy and W. J. D'Arcy?

A. I met Mr. D'Arcy, but I have never met Mr. Christy.

Q. I will ask you whether or not you were in Black-foot during the latter part of June, 1909?

A. Yes, sir. [80]

Q. And at whose instance?

A. Why, at the instance of Mr. Hickenlooper and the Interstate Realty Company.

Q. Representing Mr. Hickenlooper as agent?

A. Yes, sir.

Q. Did you have anything to do with the cancellation of the certificate of sale of the S. J. Rich mortgage, if you know of that mortgage?

A. Yes, sir, I know of the mortgage. I was present when the money was tendered to cancel the sale.

Q. Now, prior to that time, I will ask you whether or not you had a conversation with Mr. W. J. D'Arcy, as the receiver of the Crystal Springs Investment

(Testimony of John Walker.)

Company, respecting the S. J. Rich mortgage and the redemption of the property? A. Yes, sir.

Q. You may relate the conversation.

A. Coming to Blackfoot, I immediately got acquainted with Mr. D'Arcy, and called his attention to the fact that by a certain day a mortgage foreclosure would—I think the sale of the foreclosure would be—the time for redemption would expire, and asked him if there was any possible way whereby he might save that redemption, or save the time of expiration of that certificate, in order to protect the interest of the Crystal Springs Investment, by dividing the land, the property that they had, by losing that amount of land and reducing the value of the security or the value of the ranch materially; and he informed me that there was no possible way to his knowledge whereby he could make any effort to redeem it, and I called his attention to the fact that the First National Bank of Blackfoot—there was a mortgage—some kind of a mortgage up there, I believed, as security to those people, that had been a second mortgage on the same property, or including that property, and asked if he thought [81] if they were solicited or if they were reminded of the fact that that mortgage would lose its value by not redeeming that certificate if they wouldn't advance enough money to take that up, in order to make the mortgage that they had the first mortgage—an absolute mortgage—instead of losing it altogether, and giving to them to the amount of money that they had involved in that mortgage a complete mortgage to that three hundred and some acres

(Testimony of John Walker.)

of land—I don't remember.

Q. Now, was that the mortgage referred to in the complaint as the mortgage held by T. H. Christy?

A. Yes, that is the Christy mortgage, I think.

Q. It was then held by the First National Bank?

A. Yes, sir, that was held by the First National Bank; it was there as security.

Q. Now, you may continue.

A. And Mr. D'Arcy was favorable to my going over and mentioning it to these people. I went over to the bank, and Mr. Christy, they told me, or the cashier, whom I presume was Mr. Christy, because I didn't meet Mr. Christy, he was out of town, he was on a vacation. It was indefinite as to the time he should return. It was about a week until the time that the foreclosure certificate would be issued, or the time the redemption would expire, and at the instance of the Hickenloopers I was very anxious that no time should be lost, when it was so near the date, in making some arrangement to protect that property; but the young man who seemed to be the assistant cashier, or someone of sufficient importance or knowledge of the bank's affairs to be left in charge during the absence of the cashier, told me at the first visit—

Q. Just a moment. Do you know who that man was?

A. Well, I am not positive as to the man's name. There were two young men in the bank. [82]

Q. But you don't know whether he was assistant—you spoke of his being assistant cashier.

A. I said I didn't know whether he was assistant,

(Testimony of John Walker.)

but somebody sufficient in authority to be left in charge during the absence of the cashier. He said he wasn't cashier; he was left in charge of the bank's affairs during the absence of the cashier, so he told me. I entered into a conversation with two young men there, and they said that they believed that that mortgage was there, but they didn't know; it was put up with the other stuff, presumably—some certificates of stock in some companies, together with that mortgage, as collateral; and they would find out if I would return. I went back, and they said it was there, but they hadn't had any instructions what to do with it. I wanted to know if Mr. Christy would be back in time to take care of that mortgage. They said they couldn't tell; they didn't think he would. I said, "Don't you feel that your position would justify you in protecting your interest in that mortgage—in advancing the money to redeem this foreclosure sale here?" And they said they didn't know; they didn't think it would; they would find out; that a number of the directors of the banking company were in town, and they could see some during the day and they would let me know. And I went away again. In the meantime I had become pretty well acquainted with Mr. D'Arcy and several of the other boys around town, spending my time in their offices and different places, and going back several times to see these young men who were in charge of the First National Bank.

Q. Now, then, right there, let me interrupt you. Where were these two young men in the bank? Were

(Testimony of John Walker.)

they in the window of the paying teller, or at the cashier's desk?

A. One of them was at the paying or receiving teller's window. As I remember it was just a wicket—a sort of wicketwork [83] in that one room,—and one was up at the paying teller's window, and the other principally working on the books. I was behind the wicketwork, sitting down on chairs there along with them.

Q. And was there anyone else there in charge, or were they in charge there together?

A. They were in charge together.

Q. Now, you may go ahead.

Mr. HANSBROUGH.—Well, just a moment now. Unless he attempts—this charge is direct against Christy, and unless he attempts to connect or bind Christy with it, I object. It would not be competent for any purpose. Of course, I have hesitated—You never saw Christy?

WITNESS.—I never saw Christy.

Mr. SKEEN.—Well, make your objection.

Mr. HANSBROUGH.—I object to it as incompetent, irrelevant and immaterial, and not tending to prove any issue in the case, and move that the evidence in relation to the parties in charge of the bank, or presumed to be in charge of the bank, be stricken out, as incompetent for any purpose, and it does not tend to prove any issue in the case. That's all.

Mr. SKEEN.—Now, you may go ahead.

A. On finally being informed that they would not care to advance the money to protect the interest—

(Testimony of John Walker.)

Q. Now, just a moment. Let me interrupt you.

A. Yes, sir.

Q. You were going to relate, or were relating something with respect to inquiries that these young men were going to make of the directors.

A. Yes, sir; I was just coming to that right now. They reported to me that they didn't think that they could make any effort, and I asked this question: "Providing the people that I represented will advance part of the money, will you advance the [84] other part of that money, to the amount that you think you would be justified in going to protect your interest?" And they said, "Now, we can't say; there are other—there are members of the directorate in the town, and if you will call back this afternoon about two or three o'clock we will call two or three of those people in here and we will give you a definite answer." So I returned in the afternoon about that time, about two or three o'clock, and asked what the conclusions were, and they said, "We have had a conversation with some of the directors of the bank and they say that our interest in the mortgage is not sufficient to justify us in advancing any money; that we have no other security; the mortgage is simply here as collateral, and we don't feel like spending any money on that mortgage at all, in order to stop the foreclosure, or the time for redemption"—the final foreclosure I suppose it would be. So with that effort, seeming to be the last effort to put forth on those people, I communicated with Mr. Hickenlooper that the money would have to be raised there, Mr.

(Testimony of John Walker.)

D'Arcy in the meanwhile asking if I thought it possible that it could be raised, and I said "Yes; I believe if Mr. Hickenlooper is communicated with, why he will advance the money in order to save that land to the good of the company." He said, "Well, we will get in touch with him," and I immediately telephoned to him, and Mr. Hickenlooper came to town the next day.

Q. And what day was that?

A. Why, it was near the end of June. I believe he was here on the 29th of June. I am not positive as to dates. It has been some two years ago, but I think that was the time, because I remember I was here for the purpose of having these people take it up by the 30th of June. It was the day before the money was tendered that he came.

Q. Now, were you with Mr. Hickenlooper on the 30th? [85] A. I met Mr. Hickenlooper here—

Q. Did you go with him—

A. —on the 29th, not on the 30th.

Q. On the 29th? A. Yes, sir.

Q. Did you go with him to the First National Bank? A. No, sir.

Q. You didn't see Mr. Christy?

A. No, sir. I was through with the bank, as far as I was concerned, because I had worked it out to my satisfaction that they would do nothing relative to the redemption of the foreclosure.

Q. Now were you here on the 30th?

A. Yes, sir.

Q. Did you see Mr. D. R. Jones, cashier of the

(Testimony of John Walker.)

State Bank of Blackfoot, on that day?

A. Yes, sir, I did.

Q. What time?

A. I saw him several times during the day; the last time was very close to five o'clock, sometime close to ten minutes to five in the evening.

Q. And where did you see him?

A. In the Blackfoot State Bank.

Q. Now, what if anything, did you do at that time with respect to paying the sheriff \$2,012.00, and securing the cancellation of the certificate of sale under the Rich mortgage?

A. With Mr. D'Arcy, I was waiting for the money to be transferred to this bank before the office hours of the sheriff for the day had closed, in order to take up the cancellation of the certificate, and about ten minutes to five, in that neighborhood, a telephone message was received while we were in the State [86] Bank of Blackfoot by Mr. Jones, who said, "It is all right, the money is here"; whereupon he instructed Mr. D'Arcy to make out a deposit slip for the amount of money that was telephoned, giving him a check-book in return, in order that he might spend the money according to the instructions he received, for tendering to the sheriff. Together with Mr. D'Arcy I went across the street to Mr. Jones' office—
Attorney Jones—

Q. That is John W. Jones?

A. Attorney John W. Jones, and went to the courthouse about five minutes to five o'clock, and first into the clerk's office, and finally into the sheriff's office,

(Testimony of John Walker.)

and had a little gathering there with those people and turned over the money by check—by D'Arcy's check, and coming from the courthouse, or this courthouse immediately in this direction (indicating), we came back to John W. Jones' office, and before going over to the bank I said, "Now, Mr. Jones, will you draw a suitable mortgage for the securing of this money, according to the contract to-night?" He said, "Why, it is hardly possible for me to do it to-night, but I will attend to it immediately. It is complicated, and I will have to typewrite it all; there is no form that I can use, but I will take care of it," and I said, "All right, I think I will go back to-night; there is nothing that I can do here." He said, "No; I will look after that; but by the way, there will be a fee for filing that, and I don't feel like paying out any money in connection with it; I haven't had any money on the case so far; and how about the filing of the mortgage?" He insisted on having it filed. "Well," I says, "I will advance the money," and I handed him \$2.00 and left that night with that understanding—\$2.00 to file the mortgage.

Q. Have you had anything to do with it since that time? A. No, sir. [87]

Cross-examination.

(By Mr. HANSBROUGH.)

Q. You don't know, Mr. Walker, the parties' names, you say, that were in the bank, and you never saw Mr. Christy?

A. I never have seen Mr. Christy to my personal knowledge. I did learn the names of the two young

(Testimony of John Walker.)

men in the bank at the time, but I have forgotten at the present.

Q. And you say that they told you at that time— Did they look up the mortgage while you were there?

A. Not the first time that I was there. They looked it up during my absence and had the mortgage when I came back.

Q. You saw the mortgage with him?

A. I saw the mortgage—what he said was the mortgage, but I never read the mortgage.

Q. Well, I mean you saw it in his hand?

A. Yes, sir; they said they had it there, and showed me the papers—a bunch of papers.

Q. And you say they told you that it was merely held as collateral? A. Yes, sir.

Q. And they had other security? A. Yes, sir.

Q. For their debt there? A. Yes, sir.

Q. He also told you that—assigned that as a reason why they wouldn't put up any money on it, was that it—that they didn't need to?

A. They didn't need to, was one of their reasons.

Q. Because they had other security?

A. They had other security.

Q. And were merely holding that as collateral; and that is the reason why they wouldn't, as you understood from them, [88] put up any money to redeem?

A. They gave me to understand that they didn't place sufficient confidence, or sufficient importance, in the mortgage being placed there as collateral for them to spend any more money in connection with it.

(Testimony of John Walker.)

Q. Now, at this time you had first, you say, talked with Mr. D'Arcy about it? A. Yes, sir.

Q. And it was by the direction of Mr. D'Arcy that you went over there and talked with these people, or upon his suggestion?

A. After first suggesting to him about the mortgage there, and about the possibility of those people doing—making the redemption, if they were reminded; then on his suggestion I went to those people.

Q. Well, the question then of a mortgage from Mr.—that Mr. D'Arcy, the receiver, was to give you the one that you say you talked to Mr. Jones about—

A. Yes.

Q. —Mr. D'Arcy didn't refuse to give you a mortgage?

A. No. We hadn't definitely decided between D'Arcy and myself whether it would be a mortgage or a receiver's certificate, or note, or what it would be. My main object was to see that the money was tendered.

Q. That is, paid to the sheriff and redeemed, so that the property be redeemed from that sale—from the Rich sale? A. Yes, sir.

Q. And that was about all that you were here for?

A. Well, that was the main reason that I had in connection with the mortgage.

Q. And when you got that sufficiently redeemed, why you figured, of course, that the taking of the mortgage, or anything [89] that was to pass between Mr. Hickenlooper and Mr. D'Arcy after that,

(Testimony of John Walker.)

they could do themselves, and there was ample time to do it, and you paid not much more attention to it?

A. I had no reason to pay further attention to that, upon the final conversation with Mr. John W. Jones and Mr. D'Arcy, after the money had been tendered.

Q. And you say that Mr. Jones that evening told you that he would attend to it immediately; that he just simply couldn't do it that night? He didn't refuse?

A. It was late that night, and it was going to take considerable work; it had to be typewritten and drawn up, because no form that he had would be suitable for that particular kind of a mortgage that he had to draw,—a receiver's mortgage, or something.

Q. Yes, that's true; there are no forms for those, that's true.

A. Yes, and he said he was willing if I should stay over probably he would do it. I didn't see that it was necessary that I should stay over. I said, "I think I will go back to-night," and gave him the money to file the mortgage. I would have seen to the filing of the mortgage, upon the suggestion of Mr. Hickenlooper, had I remained here.

Mr. HANSBROUGH.—I think that's all.

Mr. SKEEN.—That's all with this witness.

Mr. SKEEN.—It is admitted that the District Court of the Sixth Judicial District of the State of Idaho made and entered its order in the case of A. G. Robert et al. vs. The Crystal Springs Investment Company, granting the plaintiff in this action leave to institute this proceeding, for the purposes desig-

(Testimony of John Walker.)

nated in the bill of complaint. [90]

Mr. SKEEN.—Now, as I claim attorney's fees in there, I would not ask you to admit that I am entitled to it, but if I am entitled to attorney's fees if the mortgage is reinstated and foreclosed, I take it that I would be called upon to introduce some proof as to the reasonableness of the attorney's fees. Now, would you admit that \$250.00 is a reasonable fee for foreclosing the mortgage?

Mr. HANSBROUGH.—Well, you are not asking to foreclose the Rich mortgage?

Mr. SKEEN.—Yes—to reinstate and foreclose the Rich mortgage.

Mr. HANSBROUGH.—That would not be out of the way, if you are entitled to attorney's fees at all. I don't think you are entitled to it, but \$250.00 would not be unreasonable if the court should finally determine that you are entitled to foreclose that mortgage, and that you are entitled to attorney's fees at all.

Mr. SKEEN.—Yes, and that can stand in the record as a stipulation to that effect?

Mr. HANSBROUGH.—Oh, yes; I admit that.

A recess was thereupon taken until 7:45 o'clock P. M.

At 7:45 o'clock P. M. the hearing was resumed.

[91]

[**Testimony of W. A. Hickenlooper, for
Complainant.**]

W. A. HICKENLOOPER, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. SKEEN.)

Q. Is your name W. A. Hickenlooper?

A. Yes, sir.

Q. Where do you reside?

A. Salt Lake City, Utah.

Q. Do you know of The Crystal Springs Investment Company? A. Yes, sir.

Q. What, if any, assets has that corporation at this time?

Mr. HANSBROUGH.—Just a moment. We object to that as incompetent, irrelevant and immaterial.

Mr. SKEEN.—You may go ahead.

A. The equity in the property in question in this case, if any—if there be any equity in that property—constitutes the assets of the corporation, as I understand it.

Q. That is the real estate described in the complaint? A. Yes.

Q. What is your business, Mr. Hickenlooper?

A. The land business.

Q. Are you acquainted with land values in the locality where the real estate described in the complaint is located? A. Reasonably well.

Q. How long have you been interested in land in

(Testimony of W. A. Hickenlooper.)

that locality? A. About three years.

Q. And have you bought and sold?

A. To a small degree, I will say.

Q. And have you known of real estate of the character [92] of that described in the complaint having been bought and sold?

A. Yes, I know of a few deals of that sort.

Q. What in your judgment is the real estate described in the complaint worth, at the actual market value?

Mr. HANSBROUGH.—We object to that as incompetent, irrelevant and immaterial to prove any issue in the case.

Mr. SKEEN.—Go ahead.

A. Well, I should say from \$3,500.00 to \$4,000.00.

Q. Do you know the amount of the judgment secured in the foreclosure proceedings of the Christy mortgage?

Mr. SKEEN.—You may be able to tell me, Mr. Hansbrough. What is it?

Mr. HANSBROUGH.—I don't remember. What did we ask for according to the judgment?

WITNESS.—It was either \$2,400.00; or \$2,700.00—approximately that amount.

Mr. GAGON.—\$2,080.00, with eight per cent interest from September 5th, 1898, and \$400.00 attorney's fees, and costs. That would make it about—

Mr. HANSBROUGH.— —\$2,600.00 or \$2,700.00.

WITNESS.—About \$2,700.00, I think.

Mr. GAGON.—Maybe I can get that exact.

Mr. SKEEN.—Q. Were you present during a con-

(Testimony of W. A. Hickenlooper.)

versation between C. A. Hickenlooper and James Pingree, and during the conversation over the telephone between James Pingree and Mr. Jones, of the Blackfoot State Bank, on the 30th day of June, 1909?

A. Yes.

Q. Did you hear the conversation— A. Yes.

Q. —over the telephone in so far as James Pingree [93] was talking? A. Yes, I heard all he said.

Q. I will ask you to relate that conversation.

Mr. HANSBROUGH.—We object to the question, and object to the conversation, on the ground that it is incompetent, irrelevant and immaterial, and it does not tend to prove any issue in this case.

Mr. SKEEN.—Now, you may answer.

A. The substance of the conversation was that the sum of \$2,012.00 should be charged to the Pingree National Bank, being transferred by telephone, and that that amount was to be given to the receiver—tendered to the receiver, W. J. D'Arcy, upon receipt of a first mortgage on the Sam. Rich property.

Q. Now, was that the conversation? You are stating conclusions. Can you make it more direct, as to what Mr. Pingree said?

Mr. HANSBROUGH.—We object again, because it does not tend in any way to prove any issue in this case. It is incompetent, irrelevant and immaterial; and for the further reason that if that were true, and that was the instructions, and that he did give up that money, your action would be against Jones for the recovery of that money. We object to it as incompetent, irrelevant and immaterial.

(Testimony of W. A. Hickenlooper.)

Mr. SKEEN.—Now, state what Mr. Pingree said over the phone.

A. Of course, I can't remember it very accurately. That is the substance of it, that he said to this effect: "Is this Mr. Jones?" I don't remember the words he used in transferring the money—the exact words he used.

Q. Well, give us the substance.

A. I don't remember the terms that he used, whether he [94] said "Charge us with \$2,012.00, and place that amount in the hands of W. J. D'Arcy, receiver, when he tenders you—upon receipt from him of a first mortgage on the Sam. Rich property—"

Q. The Sam. Rich property? That is the S. J. Rich property?

A. Yes—I don't know whether he used words similar to that effect, or slightly different; I can't remember.

Q. Well, was that the substance of it?

A. That was the substance of the conversation.

Q. At whose request did he make those statements, if you know?

Mr. HANSBROUGH.—We object to that also as incompetent, irrelevant and immaterial.

WITNESS.—At the request of C. A. Hickenlooper.

Cross-examination.

(By Mr. HANSBROUGH.)

Q. Where were you at the time? In the Pingree National Bank? A. Yes.

Q. Ogden? A. Yes.

(Testimony of W. A. Hickenlooper.)

Q. That this conversation you say took place?

A. Yes.

Q. Now, you stated about the assets of this corporation. You say that all it has is the equity—that is, in this particular property?

A. So far as I know.

Q. What has become of the other property?

A. Another tract of 400 acres it lost by foreclosure.

Q. Who foreclosed against that?

A. D. W. Standrod & Company. [95]

Q. Do you know what the description of that land was?

A. I can't remember the description of it.

Q. Did you ever see this mortgage—ever look over this mortgage? A. Yes.

Q. Did you ever look over the Standrod mortgage?

A. Yes, sir.

Q. Wasn't the description of these mortgages identical—cover the same property?

Mr. SKEEN.—That is, you mean the Rich mortgage?

Mr. HANSBROUGH.—No. No—the Standrod mortgage and this Mr. Christy mortgage—the one in question—the Clegg mortgage?

A. I don't recall, but I am under the impression that they are, but I can't say positively.

Q. Would you know the mortgage if you should see the description of this property—the property of this particular mortgage—where that land is located?

A. I think so.

(Testimony of W. A. Hickenlooper.)

Q. I will ask you to look at this paper—the description here—move up a little closer to the light, if you care to, and look at the description in that mortgage, and I will state to Mr. Skeen that this is a copy of the complaint and a copy of the mortgage that Christy foreclosed; that is, that is the Clegg mortgage—transferred to Brown-Hart, and from Brown-Hart to Christy—the one in question, you know. Now, that mortgage is on file.

Mr. SKEEN.—Oh, if you say that is the same description—

Mr. HANSBROUGH.—That is the same description. This is my office files in that suit.

WITNESS.—My impression was that this is correct. This mortgage covers both tracts. [96]

Q. Both tracts? A. Yes.

Q. And it doesn't cover any tract up north here formerly owned by Clegg, or anybody else, does it? That is all in the same township and range there, isn't it? A. Yes, all in the same township.

Mr. HANSBROUGH.—And I want to make that clear, Mr. Skeen, because you brought that out, that they had other security, you understand; that was there as collateral.

Q. Now it doesn't cover anything except the Crystal Springs land down there, does it, Mr. Hickenlooper? A. That's all.

Q. That is all the Christy mortgage—the Clegg mortgage—that was transferred from the Brown-Hart Company to Christy? A. Yes.

Q. That is all it covers? A. Yes.

(Testimony of W. A. Hickenlooper.)

Q. Now, then, under that mortgage there is no other security than the land in question—the 331 acres—is there, by reason of the fact that Standrod & Company have absorbed with their mortgage the other 400 acres? In other words, there is only 331 acres of that that this mortgage is a lien upon?

A. At the present time?

Q. Yes. A. That's right.

Q. The Standrod mortgage has taken the balance of the land? A. Yes.

Q. Then, they have no other security for their debt—the First National Bank or Christy—but that mortgage?

A. At the present time they have not, to my knowledge. [97]

Q. Well, they never have had any other except the land covered by the Standrod mortgage?

A. That's all I know of.

Q. And that land has since been sold by Standrod & Company, 400 acres, and the time of redemption has expired? A. Yes.

Q. You know nothing about any conversation supposed to have been had about this time between your father and either Christy or the Brown-Hart people, do you?

A. No, I know nothing of that personally.

Q. You were not here? A. I was not here.

Q. Did you have any talk with Mr. D'Arcy about this matter, before it was finally—the money was finally paid to redeem this property? A. Yes.

Q. Well, when if at all did Mr. D'Arcy offer you

(Testimony of W. A. Hickenlooper.)

or agree to give you a first mortgage on that property? I say when if at all? If he didn't at all, then of course my question doesn't go to anything.

A. He never promised me.

Q. Never to you?

A. In fact, I had not talked with him since probably a month previous to the time of the expiration of this redemption—the time of redemption.

Q. Now, you say that this land down there isn't worth over, I think you said \$3,500.00 or \$4,000.00?

A. That is the estimate I would place on its value.

Q. What character of land is it?

A. Well, most of it is a sandy loam, practically all unbroken, covered with sagebrush, having no water-right. [98]

Q. Do you remember whether the time of redemption of the Standrod mortgage had expired when you took this up?

A. Will you kindly repeat the question?

Q. Do you remember whether or not the time of redemption of the land covered by the Standrod mortgage, and for which the Standrod mortgage was foreclosed, had expired at the time you took this—you redeemed from this mortgage?

A. Standrod hadn't any more than commenced proceedings at that time, if they had done that. I don't know whether they had really commenced proceedings, but that is all they had done. They hadn't secured a judgment; that is, it hadn't come to trial at that time.

Q. They hadn't secured a judgment at that time?

(Testimony of W. A. Hickenlooper.)

A. According to my best recollection.

Q. And at that time if this company had any equity it was in the Standrod property? A. Yes.

Q. And you have redeemed from that sale?

A. Yes.

Q. But they didn't see fit to do so, and didn't redeem? A. Didn't redeem.

Q. Haven't you a private understanding with Standrod & Company, or somebody, for the purchase of that property at what it cost them?

A. I have not.

Q. Has your father? A. Not to my knowledge.

Q. Has any member of this company?

A. Not to my knowledge.

Q. Did you ever talk to them about that, and ask them if they would take their money and interest any time this matter was closed up? [99]

A. I have had—I did have such a conversation.

Q. And didn't you have an understanding with them at that time that you might purchase that?

A. I did at one time, yes.

Q. Has that been called off, or is it good yet?

A. It hasn't been in force for—well, a good many months.

Q. Have they refused to let you have that property? A. They have not.

A. The property is worth a great deal more than their mortgage, isn't it? A. I value it so.

Q. That property there is worth probable double the amount of that mortgage, isn't it?

A. Well, I shouldn't say so. It would be prob-

(Testimony of C. A. Hickenlooper.)

ably rather hard to place a valuation on it. It is in a rather dilapidated and run-down condition at the present time, which naturally detracts from its value.

Mr. HANSBROUGH.—That's all.

Mr. SKEEN.—That's all.

**[Testimony of C. A. Hickenlooper, the Complainant
(Recalled).]**

C. A. HICKENLOOPER, a witness heretofore called in behalf of the complainant, and duly sworn, being recalled in behalf of the complainant, testified as follows, to wit:

Direct Examination.

(By Mr. SKEEN.)

Q. Mr. Hickenlooper, since meeting him here and observing him more closely, I will ask you whether or not in your judgment, this is the man that you talked with, rather than Mr. Brown? [100]

A. Well, I have been puzzling my brain over it, but the more I look at him now, I know I have seen him somewhere before, and I may be mistaken in the two men. This man as I look at him becomes more familiar to me. I never saw him only the time I was in the store, and now I may be mistaken in regard to the man and have given the wrong name. I have seen this man somewhere, since I have had a good look at him, and I thought I would just like to say that much.

Q. Correct your testimony in that respect?

A. Yes, sir.

(Testimony of C. A. Hickenlooper.)

Cross-examination.

(By Mr. HANSBROUGH.)

Q. Now, after looking at Mr. Hart, do you still say that Mr. Hart told you—that is, I understand your testimony to be—

A. The man that I talked with.

Q. Yes, if this was the man you talked with, do you still say that this man told you that they would consent to take a second mortgage?

A. That he thought it could be arranged, if it was agreeable with Mr. Christy, and he would talk it over with his partner.

Mr. SKEEN.—Complainant rests, with the understanding that I will probably introduce some further proof from the defendant, Mr. Christy.

[101]

[**Testimony of Charles L. Hart, for Defendants.**]

CHARLES L. HART, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HANSBROUGH.)

Q. Your name is Charles L. Hart, is it?

A. Yes, sir.

Q. And you live in Blackfoot? A. Yes, sir.

Q. And you are a merchant, a member of the firm of the Brown-Hart Company? A. Yes, sir.

Q. And how long have you lived here, Mr. Hart?

A. About 15 years; something like that.

Q. And you have been engaged in this business all of this time?

(Testimony of Charles L. Hart.)

A. Well, not all the time for myself.

Q. No; but I say you have been in business?

A. Yes, I have been in business.

Q. Do you know Mr. Hickenlooper here, the older gentleman there? (Indicating Mr. C. A. Hickenlooper.)

A. Well, sir, I couldn't swear that I do. No, I couldn't swear that I ever saw him before.

Q. I will ask you if you remember either Mr. Hickenlooper or someone else coming into your store—oh, that has been how long ago?

Mr. SKEEN.—June, 1909.

Mr. HANSBROUGH.— — about June, 1909, and speaking to you with reference to your surrendering the mortgage that you held against The Crystal Springs Investment Company, and taking a second mortgage to his, if he would advance the money to redeem from a mortgage that had formerly been foreclosed by Sam. Rich? [102]

A. I remember some conversation with a gentleman that represented himself to be Mr. Hickenlooper. Now, I couldn't say that this is the gentleman.

Q. Now, can you now, Mr. Hart, state that conversation—the substance of it? A. Yes, sir.

Q. Just state it, please.

A. He came and asked in regard to the release of that mortgage and taking a new mortgage in second place, and I told him that I would have to see our attorney, Mr. Jones, before that I could give him any answer on the proposition, which I did; and I didn't see Mr. Hickenlooper afterwards, and never heard

(Testimony of Charles L. Hart.)

of him afterwards on the question.

Q. You may state how long it was after his visit to you before you saw Mr. Jones, your attorney, and took the matter up with him?

A. I took it up immediately, the same evening.

Q. Immediately? A. Yes, the same evening.

Q. You may state now whether or not you had a conversation over the phone, or personally, with Mr. Christy that same day, in reference to this matter?

A. Yes, sir.

Q. Just state what that was.

Mr. SKEEN.—That is objected to as hearsay.

WITNESS.—Well, I don't remember whether Mr. Christy called me up, or called on the matter, or whether I went down to see him in regard to it, and I went and told him our decision; that I had seen our attorney, and he advised us not to do it, and that is the last that I have ever heard of the matter, in regard to that, until now.

Mr. HANSBROUGH.—Q. That was the same day you say that this gentleman that spoke to you was in the store? [103]

A. Yes, sir, the same day.

Q. Did he ever come back to see you, to know what your decision was in that matter, after you told him that you would see your attorney?

A. Not that I know of; at least, he never saw me.

Q. He never saw you? A. He never saw me.

Q. I will ask you, Mr. Hart, if you at any time ever solicited Mr. Hickenlooper here to advance that money for the redemption of that mortgage, and told

(Testimony of Charles L. Hart.)

him that you would take a second mortgage if he would do it? A. No, I never did.

Q. Did you ever interest yourself in any way?

A. Not in the least at all.

Q. That, to have anyone advance money to redeem from that Sam. Rich mortgage? A. I never did.

Q. And the conversation that you have testified to here is the only conversation that you ever had with Mr. Hickenlooper, or anyone else, in reference to this matter, is it? A. Yes, sir.

Cross-examination.

(By Mr. SKEEN.)

Q. What was your interest in the Christy mortgage, Mr. Hart? A. Our interest?

Q. Yes, what was your interest?

A. The amount?

Q. Yes.

A. In the neighborhood of \$800.00; I couldn't give the exact amount.

Q. Did you have an assignment of the mortgage?
[104]

A. We had an assignment of the mortgage.

Q. And was that assignment prior or subsequent to the assignment held by Christy or the First National Bank? A. Prior.

Q. So yours was the first assignment?

A. Yes, sir.

Q. Did you know that that mortgage was a second mortgage upon the property? A. Yes, sir.

Q. And you knew that it covered real estate other than that covered by the S. J. Rich mortgage?

(Testimony of Charles L. Hart.)

A. I knew it covered all the property down there of the Crystal Springs Investment Company, or supposed to.

Q. Did you know of the foreclosure of the S. J. Rich mortgage? A. Did I know of it?

Q. Yes? A. Yes, sir.

Q. And knew that it would—that the certificate of redemption would mature, entitling the holder to a deed, on June 30th, at the close of the Sheriff's office that evening?

A. I don't remember the date exactly. I remember that it was foreclosed, and the time was about to expire at the time that Mr. Hickenlooper called to see us.

Q. What, if anything, did you do toward protecting your second mortgage after the foreclosure of the Rich mortgage?

A. We hadn't done anything in the matter.

Q. You had expended no money?

A. No money at all.

Q. Had you been requested by the stockholders, or other persons interested in the land, to take up the first mortgage, to protect the interest—

A. Which? The Crystal Springs Company?

[105]

Q. Yes? A. Never. No.

Q. Then, it wasn't your purpose to pay the S. J. Rich mortgage, or secure an assignment of the certificate of sale, or do anything else to protect your interest, was it?

(Testimony of Charles L. Hart.)

Mr. HANSBROUGH.—We object to that as incompetent for any purpose, as to what his purpose was. He didn't do it—he stated that—and that would be all that would be competent.

Mr. SKEEN.—Now, you may answer.

A. I don't remember that we had made any arrangements to take up the matter.

Q. And you intended to permit the certificate to mature, and the Sheriff to give a deed conveying the property?

Mr. HANSBROUGH.—We object again to what he intended to do, as not being competent to prove anything. He didn't do it—that's enough.

Mr. SKEEN.—Now, you may answer.

A. We hadn't made any arrangements up to this time, particularly.

Mr. SKEEN.—Now, will you read the question, please? I don't think that answer was responsive.

(The Special Examiner repeated the last question.)

WITNESS.—I won't say that we did intend to. No, I won't say that we did.

Mr. SKEEN.—Q. Well, you had done nothing further—

A. We had done nothing.

Q. —however, to protect the certificate from maturing,— A. No.

Q. —up to five o'clock of the last day?

A. We had not.

Q. Didn't Mr. Hickenlooper ask you if you wouldn't be [106] willing to do something toward

(Testimony of Charles L. Hart.)

protecting the property? A. No, sir.

Q. Did he ask you if you had any objections to his stepping in and protecting it?

A. He did not, that I know of.

Q. You referred to Mr. Jones; is that John W. Jones, the attorney? A. Yes, sir.

Q. And there is no other John W. Jones, as attorney, in Blackfoot? A. Not that I know of.

Q. He is the person—

A. John W. Jones, the attorney here, is the only one by that name that I know of.

Mr. SKEEN.—I think that's all.

Redirect Examination.

Mr. HANSBROUGH.—Now, with reference to these assignments, the matter that you are speaking of, they are all on file in the case over there. Mr. Hart has answered that he had an assignment.

Q. I will ask you, Mr. Hart, if you didn't assign this mortgage to Christy? A. Yes, sir.

Q. That mortgage? A. Yes, sir.

Q. Prior to the bringing of this suit?

A. Yes, sir.

Mr. HANSBROUGH.—I will say if you want that we will furnish you a certified copy.

Mr. SKEEN.—Oh, no, I will not ask that.

Q. The assignment was made for the purpose of the suit, was [107] it not—foreclosing the mortgage?

Mr. HANSBROUGH.—We object to that as incompetent, irrelevant and immaterial, what it was

(Testimony of Charles L. Hart.)
made for. It was an assignment.

Mr. SKEEN.—Well, you may answer.

A. Well, I didn't understand the question.

Q. The assignment was made for that suit—to secure collection of it?

A. Yes, sir, for the purpose of foreclosing, as I understand it.

Mr. SKEEN.—That's all.

Mr. HANSBROUGH.—That will be all, Mr. Hart.

[Testimony of T. H. Christy, for Defendants.]

T. H. CHRISTY, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HANSBROUGH.)

Q. Your name is T. H. Christy, is it?

A. Yes, sir.

Q. You live in Blackfoot? A. Yes, sir.

Q. You are cashier of the First National Bank of Blackfoot? A. Yes, sir.

Q. And how long have you lived here, Mr. Christy?

A. Four years.

Q. You have been continuously in that bank since you have been here? A. Yes, sir.

Q. Mr. Christy, I will ask you if you are the T. H. Christy, the owner of the mortgage—that brought the suit for the foreclosure of the mortgage formerly given to the Brown-Hart [108] Company against the—that is, given to Clegg, and assigned to the Brown-Hart Company, and then by them assigned

(Testimony of T. H. Christy.)

to you, against The Crystal Springs Investment Company and W. J. D'Arcy, receiver? Are you the plaintiff in that case, that brought the suit in the lower court to foreclose that mortgage?

A. Yes, sir.

Q. I will ask you, Mr. Christy, to just state how you became possessed of that mortgage.

A. That mortgage was taken as collateral security to a debt owing to the bank by Thomas G. Clegg; that is, for a portion of it; the portion that belonged to the Brown-Hart Company was assigned to me so as to make the foreclosure all in one claim.

Q. And then by the bank it was also assigned to you?

A. It was assigned to me directly, to start with.

Q. By the bank? A. No.

Q. Oh—it was assigned to you directly?

A. Yes, and I held it.

Q. And you held it?

A. Yes, I held it for the bank.

Q. I will ask you if you are acquainted with Mr. Hickenlooper—the older gentleman here? (Indicating Mr. C. A. Hickenlooper.)

A. I have met Mr. Hickenlooper.

Q. When did you meet him?

A. Well, I couldn't say right sure. I think likely my first meeting with him was directly after my return from the Seattle Exposition; I think that was when I first met him, according to my recollection. I know I never met him before I met him at that time.

(Testimony of T. H. Christy.)

Q. I will ask you if you remember when the—or, if you knew of the mortgage that was given by the Crystal Springs Company, I think it was—it was given by them, wasn't it?—or given by Clegg to Sam. Rich? [109]

A. I knew something of that transaction. I knew there was such a deal.

Q. Do you remember that mortgage having been foreclosed in the courts here?

A. I had so heard. I had never examined the records or been in attendance at court, or anything of that kind. I had so heard, that that was the case.

Q. Well, do you remember whether or not that mortgage was redeemed; that is, that there was a redemption took place of that, by Mr. Hickenlooper?

A. I was so informed, yes.

Q. Do you know when that took place?

A. It took place during my absence from Blackfoot, while I was at the Exposition.

Q. Where was that? A. At Seattle.

Q. At Seattle? A. Yes.

Q. Now, I will ask you to state whether or not you ever had any conversation with Mr. Hickenlooper here—this gentleman—(indicating Mr. C. A. Hickenlooper)—as solicited him to redeem that property from the Sam. Rich mortgage?

A. I did not.

Q. Did you ever have any conversation with him at all in reference to redeeming that property from the Sam. Rich mortgage?

A. Not until after it had been reported to me that

(Testimony of T. H. Christy.)

it had been done. We talked it over then, but nothing in reference to the redemption of it at all.

Q. All your conversation was after it had been redeemed? A. It certainly was.

Q. Do you know about when that was, Mr. Christy?
[110]

A. I know the date I had the conversation with him.

Q. Well, that's what I mean.

A. On the 5th day of—let me see—the 5th day of July.

Q. What year?

A. That was—let's see—I was just trying to think now—it was the year of the Exposition; that was two years ago, wasn't it?

Q. 1909, then? Yes, it would be 1909?

A. Yes, 1909. It was a year ago last July; that's when it was.

Q. Now, Mr. Christy, you say that that is the only conversation you had with him?

A. In regard to that matter, that was the only time.

Q. Now, just state what that conversation was, if you can, just as near as you can.

A. He and Mr. D'Arcy came into the bank and approached me in regard to the matter, requesting that we release this Clegg mortgage that you have asked me regarding, so as that they might have the first lien on this particular tract of land, and rather suggested as though they intended to pay off this judgment, which is what is called, as we take it, the Sam. Rich judgment. I said to Mr. Hickenlooper

(Testimony of T. H. Christy.)

that I had understood that that had been settled, and as I now remember it he said it had not entirely been, and I said to him that the Brown-Hart Company had the first assignment of that mortgage; that is, whatever their claim was—from Clegg—they had the first right to this mortgage, and that we had the balance, and that if he would go to them that I knew their attorney—at least, that I supposed that their attorney was John W. Jones, and if he would recommend that they release their portion of it that we would do likewise; and it wasn't very many hours—I would say two or three hours after that—when Mr. Hart and Mr. Clegg both, I think, called at the bank, and stated to me— [111]

Mr. SKEEN.—Just a moment as to that. That is objected to upon the ground that it is clearly hearsay—a conversation occurring in the absence of the party plaintiff in the case.

Mr. HANSBROUGH.—Well, just go ahead and tell what happened.

A. Mr. Hart and Mr. Clegg called, as I say, within two or three hours, I think; it might have been longer, but it wasn't very long; and stated to me that the Rich judgment had been fully paid and satisfied, and I said, "In that event the lien that we now hold will stay just as it is."

Q. Now, I will ask you if you ever had any further conversation with Mr. Hickenlooper?

A. I don't recall of ever entering into the matter further.

(Testimony of T. H. Christy.)

Q. But this, you say, was the first and only conversation up to that time that you had in reference to that matter? A. It was.

Q. After the matter had been closed—been paid?

A. After it had been paid.

Q. And you never had any conversation with him or anyone else before it had been paid, in reference to releasing your lien? A. None.

Q. And you say you never solicited him to do it?

A. I never did.

Q. Or his son, or anyone else connected with these people, did you, or not? A. No, sir.

Q. No one? A. No one.

Q. You have had considerable conversation—that is, by letter, etc., since,—in reference to the matter?

A. We have had some.

Q. Some correspondence?

A. Some correspondence, where those letters, I think, were referred to, and indirectly, as you may term it. [112]

Cross-examination.

(By Mr. SKEEN.)

Q. As I understand you, Mr. Christy, the mortgage foreclosed in your suit against The Crystal Springs Investment Company was originally taken by the First National Bank of Blackfoot as collateral security? A. A portion of it was.

Q. Yes, a portion? A. A portion.

Q. That is, the bank's portion? A. Yes.

Q. And it was taken in your name?

(Testimony of T. H. Christy.)

A. In my name.

Q. You have during all of the time held it for the bank? A. Yes.

Q. And the balance of the interest in the mortgage was taken by you, by assignment from the Brown-Hart Company, for the purpose of foreclosing in the one action?

A. So as to bring the one action. The matter was placed with Mr. Hansbrough to foreclose it all in the one action.

Q. Do you know when the certificate of sale in the S. J. Rich mortgage matured?

A. I don't know of my own knowledge, by examining the records or attending court, but I know in a general way that it was the last day of June, was my recollection.

Q. That is, you have been so informed?

A. Yes, sir. I never examined the record.

Q. Have you made any examination of the records to ascertain when the certificate was taken up by Mr. Hickenlooper? A. I have not. [113]

Q. So when you say that the conversation you had with Mr. Hickenlooper was after the certificate was taken up, you are speaking wholly from hearsay?

A. To a large extent, yes.

Q. How do you fix the date of your conversation with Mr. Hickenlooper as July 5th?

A. I returned from the Exposition—I arrived home the night of the 3d—Saturday—late; the train came in after night. I was at home all day Sunday

(Testimony of T. H. Christy.)

—I might have been at the bank a little while—and Monday was the first day that I was at the bank after that, and it was on that date that he called.

Q. Did you make any note or memorandum of record of the date of your return from Seattle?

A. I did not.

Q. You are speaking from memory in regard to that?

A. I know just exactly what date I got home. I didn't need to. They had a celebration on here—what is called here—oh, some kind of a jubilee. I remember very distinctly when it was, and that was Saturday and Sunday.

Q. You are speaking from memory? A. Yes.

Q. And not as to any record as to that?

A. No, I didn't make any record as to when I returned, but I know of my own knowledge when I did return.

Q. And you are also speaking from memory as to the time when Mr. Hart called on you and told you that the mortgage had been—the S. J. Rich mortgage had been paid, with respect to the time when you had the conversation with Mr. Hickenlooper?

A. Yes; I know it was the same day. I couldn't tell just how many hours after, but I know it was a very few hours—not to exceed two or three hours—but I know it was the same day. [114]

Q. Well, you are depending upon your memory as to that, are you? A. Yes, sir.

Q. That it was the same day?

(Testimony of T. H. Christy.)

A. I didn't set it down anywhere. I didn't need to.

Mr. SKEEN.—I think that's all.

Redirect Examination.

(By Mr. HANSBROUGH.)

Q. You are positive, are you, Mr. Christy, that you were not here—I will first *wsk* you this question: About how long were you gone when you were over to the Exposition there?

A. I think twelve days.

Q. And you returned from there on the 3d day of July, 1909?

A. I got back here on the 3d day of July. I left on the 21st day of June, now; I know when I left.

Q. Then you were not here on the last days of June?

A. I was not; I was in Portland on the last day of June.

Q. Well, the last days, I said; that is, the last two or three days of June? A. Yes.

Q. And you never had any conversation with Mr. Hickenlooper, or anyone else, in reference to his redeeming this mortgage, until after you returned from there? A. I did not.

Q. I want to ask you this: Who was assistant cashier of the First National Bank about the last days of June, or when you returned—when you were gone—of the First National Bank—in 1909? [115]

A. D. V. Archbold.

Mr. HANSBROUGH.—That's all.

[**Testimony of Charles L. Hart, for Defendants
(Recalled).**]

CHARLES L. HART, a witness heretofore called by the defendants, and duly sworn, being recalled in behalf of the defendants, testified as follows, to wit:

Direct Examination.

(By Mr. HANSBROUGH.)

Q. Mr. Hart, I didn't know—I didn't think to ask you that question—in fact, I didn't know it myself at that time—I will ask you this question: Do you know the date it was that you had the talk with Mr. Christy? A. I do not.

Q. That conversation you had with him at that time—with Mr. Hickenlooper and Mr. Christy—was that the only conversation you ever had?

A. That is the only conversation I ever had. I don't even know what the date was of the expiration of the redemption.

Q. I see. That is the only conversation you ever had?

A. That is the only conversation I ever had.

Q. You heard Mr. Christy testify about you going to the bank over there and talking to him, did you, about this? A. Yes.

Q. You remember that, do you? [116]

A. Yes, I remember that. I remember going in there with Mr. Clegg, but I don't remember whether this was on the same date or not as the other.

Q. You heard him testify that it was?

A. Yes, sir.

Q. You would not say that it was not?

(Testimony of Charles L. Hart.)

A. I would not.

Q. What would be your idea about—what is your recollection about it, if you have any?

A. Well, the evening that Mr. Clegg and I went in over there was the evening, if I remember correctly, that the payment was made. We were both in John Jones' office, or I was, at least, and Mr. Clegg came in and said that the money had passed to the Sheriff to redeem the property.

Q. Well, that was the only conversation you had with Mr. Hickenlooper? A. Yes, sir, it is.

Q. Then you went to John Jones' office?

A. Yes.

Q. And then you went to the bank with Mr. Clegg?

A. I don't remember whether that was the same day or not that I went to the bank with Mr. Clegg; I don't know whether that was the same day or not. If it was, it wasn't the same day Mr. Hickenlooper's evidence shows that we had the conversation; that was a day later. But I don't know—I couldn't give you anything as to dates at all, whether it was in April or May or June, or what it was. I simply remember the conversation in regard to that, and remember going over to Jones' office, in regard to the matter.

Q. But you heard Mr. Christy testify that it was the 5th day of July that you went to the office over there and talked with him? [117]

Mr. SKEEN.—Now, that is objected to as leading.

Mr. HANSBROUGH.—Well, I merely asked him if he heard him testify to that. Now, go ahead.

(Testimony of Charles L. Hart.)

You heard Mr. Christy testify to that?

A. I believe that is the date that he had the conversation with Mr. Hickenlooper he said; isn't that it?

Q. Yes. A. The same date.

Q. The same date—on the 5th of July?

A. On the 5th of July.

Q. Now, you also heard him state that that is the only conversation he had with him in reference to the matter, did you? A. Yes, sir.

Q. Well, do you remember of having but one conversation with Mr. Hickenlooper and Mr. Christy about that matter?

Mr. SKEEN.—I desire that all this matter go in subject to my objection that it is leading.

WITNESS.—I never had but one conversation with Mr. Hickenlooper.

Mr. HANSBROUGH.—Q. Well, do you remember having any more than that one conversation with Mr. Christy; that is, I mean right about that time? You may have talked with him since?

A. I don't remember that we had.

Cross-examination.

(By Mr. SKEEN.)

Q. Now, Mr. Hart, I understand from you that in company with Mr. Clegg you went into Mr. Jones' office the evening of the day when the payment was made to the Sheriff redeeming the land from the S. J. Rich sale; is that right?

A. No; I didn't go to the office with Mr. Clegg; I was there when Mr. Clegg came in. [118]

Q. Oh—you were in Mr. Jones' office and Clegg

(Testimony of Charles L. Hart.)

came in? A. Yes, sir.

Q. And reported to you that the property had been redeemed from the sale? A. Yes, sir.

Q. And you then went to the First National Bank?

A. If I remember correctly. I had forgotten it until Mr. Christy spoke of it. I think we walked to the bank.

Q. That is your recollection, that you went down to the bank then?

A. Now, whether it was the same time. I remember going in there with Mr. Clegg in regard to the matter, and I think it was that same evening.

Q. And at that time you told Mr. Christy that the money had been paid over?

A. So I understood, yes. I wouldn't want you to say that I know positively, but that was simply hearsay.

Q. That is your best recollection, however, as to the time and the circumstances of reporting that to Mr. Christy?

A. Yes, sir. I couldn't say anything about what the date was, or anything about it.

Q. Well, just a moment. You, however, fix the time with regard to the date of the payment?

A. With regard to the date of the payment, yes, sir.

Q. So, you don't know the date of the month, or the year, or the month? A. No, sir.

Q. But you fix it with respect to the date of the payment? A. Yes, sir.

(Testimony of Charles L. Hart.)

Redirect Examination.

(By Mr. HANSBROUGH.)

Q. Just a moment, Mr. Hart; let us get this. Do you know [119] exactly what day the payment was made? Now, here is the point I am asking you, that I want to get at: At the time that you went over to the bank to see Mr. Christy about this matter, did you see Mr. Christy and talk with him?

A. At the time that I went over, yes, sir.

Q. You saw him? A. Yes, sir.

Q. Did you hear Mr. Christy testify that he wasn't here on the last days of June, and wasn't here until the 3d of July? A. I did.

Mr. SKEEN.—I want to object to that as leading, and calling for the witness to pass upon the accuracy and correctness of the testimony of another witness, and tending to impeach the testimony of a witness for the same party.

Mr. HANSBROUGH.—Oh, no, I don't want to impeach him at all.

Q. Now, I will ask you, Mr. Hart, if it was on the 5th day of July that you went to the bank to see Mr. Christy? Was that the same day that you had the talk with Mr. Hickenlooper about that matter? Was it the same day?

A. That Mr. Clegg and I went in there?

Q. Yes.

A. I couldn't say positively. I couldn't say.

Q. Well, you say, though, that you didn't go there but once to the bank with Mr. Clegg?

A. Never but the once.

(Testimony of Charles L. Hart.)

Q. And at the time you did go to see Mr. Christy there and talked with him? A. Yes, sir.

Q. Then, you are not perfectly sure when that payment was made?

A. I don't know what date that payment was made, no, sir. [120]

Q. If that payment was made on the last day of June, 1909, and Mr. Christy wasn't in Blackfoot on that day, then it must have been a later date you went to the bank and told him, wasn't it?

Mr. SKEEN.—Just a moment. I object to that upon the ground that it is argumentive, and attempting to induce the witness, by a leading question to make a statement contrary to that which he has already made.

Mr. HANSBROUGH.—Well, that is your objection. Now, read him the question, please.

(The Special Examiner repeated the last question.)

Mr. HANSBROUGH.—It is leading. I won't insist on it. You need not answer it. That question tends to be leading, and it might be argumentive, and I don't want to encumber the record with something that wouldn't be competent. That's all.

[**Testimony of W. J. D'Arcy, for Defendants.**]

W. J. D'ARCY, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HANSBROUGH.)

Q. Your name is W. J. D'Arcy? A. Yes.

Q. You live in Blackfoot, Mr. D'Arcy, and have lived here for several years? A. Yes, sir.

Q. In the real estate and loan business?

A. Yes.

Q. You are also the receiver for The Crystal Springs Investment Company? [121]

A. I am.

Q. You are acquainted with Mr. Hickenlooper there, the older gentleman—both of them, I presume?

A. I know the older gentleman, particularly.

Q. I will ask you, Mr. D'Arcy, to state whether or not you ever had any conversation with Mr. Hickenlooper with reference to his redeeming that property from a foreclosure sale, under what is known as the Sam J. Rich mortgage. A. Yes, sir.

Q. When, about, did you have that conversation, Mr. D'Arcy? A. Well, I have had several.

Q. You have had several conversations with him?

A. —conversations with him.

Q. Mr. Hickenlooper, as I understand, advanced the money to you, as receiver, for the redemption of that mortgage? A. Yes, sir.

Q. I will ask you, Mr. D'Arcy,—

(Testimony of W. J. D'Arcy.)

A. That is, it was advanced through him.

Q. I will ask you, Mr. D'Arcy, if you at any time, as receiver of this company, or as a private citizen, ever solicited Mr. Hickenlooper to advance that money for that purpose—solicited—asked him to do it—used your influence to get him to do it?

A. No.

Q. Now, you may state just how—well, I will ask you another question first: Did you or did you not ever promise Mr. Hickenlooper, if he would advance the money to redeem that property from the Sam. Rich mortgage, that you would give him a first mortgage upon that property? A. I never did.

Q. I will ask you to state, Mr. D'Arcy, if you remember just what conversation you had with Mr. Hickenlooper in reference to his [122] redeeming that property, about the time he did redeem it, or that it was redeemed through him?

A. Do you desire for me to relate that conversation now, or if I remember the conversation?

Q. Oh, if you remember the conversation? I say, did you have a conversation with him?

A. Oh, yes. Yes.

Q. About the time he advanced that money?

A. Yes.

Q. Now, you may state what that was.

A. Well, about the time of the—after the Sam. Rich foreclosure, we all understood, everyone that was connected with The Crystal Springs Investment Company, that Kraack & Edwards had purchased that execution, and when about the time for repemp-

(Testimony of W. J. D'Arcy.)

tion was out Mr. Hickenlooper and I had a conversation with reference to the redeeming of that property, and in the course of the conversation Mr. Hickenlooper fully understood from me—and himself, for that matter,—

Mr. SKEEN.—Just state the conversation, and not your understanding.

WITNESS.—Oh—pardon me. In the course of the conversation this was said: that if Mr. Hickenlooper advanced this money that it would go for the benefit of all of the stockholders of The Crystal Springs Investment Company, and I said yes, that's true; that he would have no more rights in that than anyone else, only as a stockholder of the company; and we discussed the thing pro and con, and Mr. Hickenlooper said, "Well, under the circumstances, he was willing to take his chances, anyhow; he guessed the property was sufficient security, anyhow, for that amount of money."

Mr. HANSBROUGH.—Q. Do you remember, Mr. D'Arcy, whether or not he was familiar with this Christy or Clegg mortgage on that property? Did you have a [123] talk about that?

A. Oh, yes; he—

Mr. SKEEN.—Well, I don't want to object all the time—

Mr. HANSBROUGH.—Well, I was just asking him that.

A. Oh, yes, Mr. Hickenlooper was thoroughly conversant with the indebtedness of The Crystal Springs

(Testimony of W. J. D'Arcy.)

Investment Company; in fact, we discussed it pro and con.

Mr. SKEEN.—That is objected to as being a conclusion of the witness, and I move to strike it out.

Mr. HANSBROUGH.—Q. And, as I understand from you, you have testified that there was no talk between you and Mr. Hickenlooper about his having a first mortgage on that property?

A. I don't recall that there was any. I think Mr. Hickenlooper asked the question from me, as I recall it, whether or not he would be placed in the same position as the purchasers of the Sam. Rich mortgage; in other words, in Kraack & Edwards' position; and I said "No, under no circumstances; no."

Q. Then I understand from any conversation he had with you, that you at no time insisted upon his redeeming this property and promised him a first mortgage?

A. Oh, no; quite the contrary, because I told Mr. Hickenlooper emphatically that in the redemption he would only stand as one of the creditors, and he would have to redeem for the whole bunch of stockholders.

Q. I want to read just a little from this complaint. Mr. Hickenlooper further says "that he was solicited by the said receiver and by the said T. H. Christy and his predecessors in interest, to redeem from this sale." That is an allegation in his complaint. I understand from you, you say you never solicited him? A. I never did. [124]

(Testimony of W. J. D'Arcy.)

Cross-examination.

(By Mr. SKEEN.)

Q. You say you had a number of different conversations with him, Mr. D'Arcy? A. Yes.

Q. When did you have those conversations? Do you remember the dates?

A. No, I couldn't tell you the dates at all.

Q. When was it with respect to the maturity of the certificate of sale of the S. J. Rich mortgage?

A. Well, sometime prior to that.

Q. The day before?

A. Oh, it was before that—long before that.

Q. Well, didn't you have a conversation the day before the maturity—the 29th day of June?

A. I don't recall that I did at this time.

Q. When he was up here from Ogden?

A. Mr. Hickenlooper made a great many trips up here, and pretty near every time I saw him we discussed something in connection with The Crystal Springs Investment Company.

Q. Well, do you remember of the redemption of that property?

A. Yes, I do; I have a faint remembrance of that.

Q. Getting the money out of the State Bank of Blackfoot?

A. Yes, I gave a check to the sheriff for the amount.

Q. Now, don't you remember having a conversation with Mr. Hickenlooper the day before that?

A. I don't recall the conversation, but I might have had it.

(Testimony of W. J. D'Arcy.)

Q. And didn't you at that time go with him to the Brown-Hart Company and have a conversation with Mr. Brown or Mr. Hart on that day?

A. I don't recall that I went there with him. I may have done [125] so, but I don't recall it.

Q. Well, do you recall going with Mr. Hickenlooper to the First National Bank at Blackfoot and having a conversation with Mr. Christy?

A. I think I did.

Q. Respecting that? A. I think I did.

Q. And when was that with respect to the date of the maturity of this certificate?

A. Well, it must have been about the same time.

Q. The day before? A. I couldn't say.

Q. Now, Mr. Hickenlooper wasn't here in Blackfoot at the time you received the money from the State Bank at Blackfoot?

A. I don't remember. I don't remember whether he was there or not.

Q. Well, wasn't Mr. Walker there, representing Mr. Hickenlooper?

A. Mr. Walker was here at different times in connection with that.

Q. Well, wasn't Mr. Walker with you at the State Bank when you received the money? Didn't he go with you to the sheriff's office and redeem the property?

A. Well, I'm sure I don't know at this time. I couldn't say. I don't know that Mr. Walker was here and was interested in that thing—in that redemption.

(Testimony of W. J. D'Arcy.)

Q. What do you remember with respect to securing that money? Who was present at that time?

A. Well, it seems to me that the money was telegraphed here.

Q. Yes. A. From Ogden. [126]

Q. Telephoned?

A. Or telephoned. Yes, telehponed or telegraphed.

Q. To Mr. Jones, of the State Bank?

A. To the bank here, and placed to my credit, and I gave a check for the amount to the sheriff.

Q. You were there at the bank at the time Mr. Jones received a message to pay the money to you and charge it to the Pingree National Bank at Ogden, were you not?

A. No, I wasn't there; I was at the office, I think. Mr. Vanderwood called me at the 'phone.

Q. And then you went over to the bank?

A. Yes, I went over to the bank.

Q. And was Mr. Walker in the office with you when you received the message?

A. In my office?

Q. Yes. A. I don't think he was.

Q. Now, since your attention has been called to some of these things, don't you remember that Mr. Walker went with you over to the sheriff's office to redeem the property?

A. It is possible that he did. Now, Mr. Walker was here—

Q. Isn't that your recollection?

A. Mr. Walker was here at different times in con-

(Testimony of W. J. D'Arcy.)

nection with this thing, as I say, and I can't remember. That was an incident that I didn't pay any particular attention to at all. It is possible he was there; I wouldn't say that he wasn't.

Q. You were around with Mr. Walker more or less, respecting this matter?

A. Yes, more or less, and visited with him, and had a great many social chats with him, and talked about many things.

Q. And was Mr. Walker here at the time you petitioned the [127] Court for an order permitting you to borrow this *mortgage* and give a mortgage?

A. He may have been.

Q. Well, how did you come to petition the Court, if you hadn't some previous arrangement justifying you to ask that you could borrow the money, if you had that authority?

A. Well, all these things were done at the solicitation of Mr. Hickenlooper, and Mr. Walker, too, I remember now.

Q. Well, you were acting as receiver for the company, were you not? A. Yes, sir.

Q. And you were anxious to do all you could for them?

A. All I could, and my course was thoroughly approved by Mr. Hickenlooper,

Q. Yes, and you filed a petition in which you set forth that the property was worth \$2,000.00 or \$3,000.00 more than the S. J. Rich mortgage?

A. Yes, sir.

Q. And that it was to the best interest of the cred-

(Testimony of W. J. D'Arcy.)

itors that you be permitted to borrow the money and authorize you to give a mortgage to secure payment of it; isn't that right?

A. I think something like that is right. I couldn't recall those things, because I haven't refreshed my memory in connection with it.

Q. And you took the petition and filed it and presented it to the Court, and secured an order authorizing you to do that? A. Yes, sir.

Q. To give a mortgage at 12% interest?

A. I don't remember the interest; but anyway that was a part of the petition. [128]

A. Well, at the time of filing that petition, or prior or subsequent to the filing of the petition, from whom did you attempt to borrow the money?

A. Well, the money all came through Mr. Hickenlooper and Mr. Walker.

Q. But, Mr. D'Arcy, you went to the trouble, and your attorney went to the trouble of preparing and filing a petition requesting authority to borrow that money. Now, didn't you do something in addition to that, towards securing that money, or securing a person who would loan that money to you?

A. I don't recall at this time now soliciting anybody to—

Q. Then do you mean to say, Mr. D'Arcy, that the petition was all an idle formality, and that you went to the trouble of preparing and filing it, and yet didn't ask anybody to loan you the money to comply with the order of the Court?

A. I don't say that the petition was all an idle for-

(Testimony of W. J. D'Arcy.)

mality, or anything of the sort. I do remember that Mr. Hickenlooper promised that money, as I recall it.

Q. He promised that money to you?

A. To redeem that property.

Q. And that is the reason you prepared the petition and secured the order of the Court?

A. Yes, sir.

Q. And you had numerous conversations with them with respect to getting that money?

A. I have talked with him repeatedly about it.

Q. And didn't Mr. Hickenlooper tell you that he would not procure the money to protect the interests of the corporation unless he was given proper security—such security as you were able to give him?

A. Yes; he wanted the mortgage.

Q. He wanted the best security you could give him? [129]

A. I don't remember that he asked the best security, but he wanted the mortgage.

Q. And you were willing to give him the best security you could, under the circumstances?

A. I was willing, yes, sir.

Q. And you asked the Court for authority to give him the best security that lay within your power, or the power of the Court?

A. I don't recall what my petition set forth now. When I was ill, a year ago—something over a year ago—Mr. Hickenlooper came up to my room at that time when I was in bed—

Q. That was after this transaction?

(Testimony of W. J. D'Arcy.)

A. After this transaction, and said I had never secured the mortgage to him.

Q. Well, we don't care about that.

A. You don't care about that? All right.

Redirect Examination.

(By Mr. HANSBROUGH.)

Q. Mr. D'Arcy, you have been in the real estate business here quite awhile? A. Yes, sir.

Q. And know these lands pretty well; and from your knowledge of them are you in a position to say about what the value of those lands are now?

A. Well, at this particular time—I haven't seen those lands—

Q. Well, I mean about the time—I will make it the date of the redemption?

A. Oh, all during that receivership time, when I made so many trips down there, yes, I would say I think so.

Q. What were the lands worth? [130]

A. The whole Crystal Springs Investment Company property, or—

Q. Just this particular property covered by this mortgage?

A. Oh, I would say \$30.00 to \$35.00 an acre.

Q. That would be \$7,000.00 or \$8,000.00?

A. Yes, \$7,000.00 or \$8,000.00.

Q. Now, Mr. D'Arcy, have you ever at any time refused to give Mr. Hickenlooper a mortgage, as directed by the Court—the order of the Court?

A. I never have.

Q. Has he demanded a mortgage lately from you?

(Testimony of W. J. D'Arcy.)

A. He never did demand one.

Q. If he had, would you have given him one?

A. I certainly would.

Q. Would you give him one to-morrow, if he should ask for it? A. Any time.

Q. You have always been ready, have you, to give him a mortgage? A. Always.

Recross-examination.

(By Mr. SKEEN.)

Q. Do you know of the foreclosure and sale of this property in the case of T. H. Christy against the Crystal Springs Investment Company, and I think yourself, as defendants?

A. Pardon me; I didn't catch your question.

Q. I say, do you know of the foreclosure and sale of this property in the case of T. H. Christy against The Crystal Springs Investment Company?

A. I don't know very much about it.

Q. Don't you know that that property sold for something like \$2,600.00 or \$2,700.00—the whole thing? That is, all the property covered by the S. J. Rich mortgage? [131]

A. I don't know that any of it—

Mr. SKEEN.—That is a fact, isn't it?

Mr. HANSBROUGH.—No, not covered by the S. J. Rich mortgage. You see, the S. J. Rich mortgage—this mortgage covered, as I remember, all that the Standrod mortgage covered.

Mr. SKEEN.—Yes.

Mr. HANSBROUGH.—Well, did the S. J. Rich mortgage cover just this 331?

(Testimony of W. J. D'Arcy.)

Mr. SKEEN.—Yes.

Mr. HANSBROUGH.—Well, then, that will probably be true.

Mr. SKEEN.—It was sold for \$2,700.00?

Mr. HANSBROUGH.—\$2,777.00, I think, was the amount.

Mr. SKEEN.—Q. And you don't know anything about what the property was sold for?

A. No, I don't know anything about it.

Q. Again referring to your visit to the First National Bank with Mr. Hickenlooper, I will ask you if it was not before Mr. Hickenlooper paid that money to you with which to redeem the property?

A. It may have been; I couldn't say.

Q. Well, isn't it your best judgment and recollection that it was?

A. I haven't anything to refresh my memory about those things.

Q. Now, referring to the object of your visit there, wasn't it for the purpose of discussing the question of priorities of mortgages with Mr. Christy?

A. I don't remember that I was engaged in any conversation. The only one I ever remember discussing at all was with Mr. Hickenlooper; and yet I may have been in a conversation with Mr. Hickenlooper and Mr. Christy at the First National Bank. Mr. Hickenlooper and I so thoroughly understood each other in connection with that matter that—

[132]

Q. Well, isn't it your best recollection that it was before Mr. Hickenlooper paid any money?

(Testimony of W. J. D'Arcy.)

Mr. HANSBROUGH.—I think he has answered the question. He said he don't know.

WITNESS.—I don't remember at all about that, Mr. Skeen.

Mr. SKEEN.—Well, that's all.

Mr. HANSBROUGH.—Q. Do you remember positively, Mr. D'Arcy, that you were at the First National Bank at all with Mr. Hickenlooper?

A. Yes, I do remember being in the First National Bank with Mr. Hickenlooper.

Q. Now, I will ask you this question: Do you remember whether or not you saw Mr. Christy there at the time you were there?

A. I don't remember, and I don't remember the conversation, and don't remember when it was, but I do remember we went in there once.

Mr. HANSBROUGH.—That's all. It is admitted by the defendants that the property described in the complaint sold for the sum of \$2,777, on execution, in the case of T. H. Christy against The Crystal Springs Investment Company, and was purchased by T. H. Christy. [133]

[Testimony of Thomas H. Hill, for Defendants.]

THOMAS H. HILL, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. HANSBROUGH.)

Q. Your full name is— A. Thomas H. Hill.

Q. You reside in Blackfoot, Mr. Hill?

(Testimony of Thomas H. Hill.)

A. Yes, sir.

Q. What is your business?

A. Assistant Cashier of the First National Bank.

Q. How long have you resided here?

A. Two years last October.

Q. And you have been in the bank since you first came? A. Yes, sir.

Q. And how long have you been—Well, that don't make any difference. I will ask you if you were here on the 30th day of June, 1909? A. I was.

Q. I will ask you whether or not Mr. Christy was here at that time, in the town?

A. No, sir, he was not.

Q. Do you know where he was?

A. He was at Seattle—Portland.

Q. And do you know when he returned from Seattle? A. The night of the 3d of July.

Q. The night of the 3d of July? A. Yes, sir.

Q. Do you know how long he was over there—how long he was gone?

A. Oh, about two weeks; something like that.

[134]

Cross-examination.

(By Mr. SKEEN.)

Q. You were in the bank on the 30th day of June, were you, 1909?

A. I was in the bank on the working days, yes.

Q. Did you make any record of the date of the return of Mr. Christy from Seattle?

A. Well, no, only in my mind. There is things that have happened that caused me to remember

(Testimony of Thomas H. Hill.)

when he came back.

Q. Have you no entries in any of your books?

A. No, sir.

Q. You don't live at his house, do you?

A. I did at that time, yes, sir.

Q. You lived at his house? A. Yes, sir.

Q. Did you make any entry in the books at the house? A. No, sir.

Q. You are depending wholly upon your memory?

A. Yes, sir.

Q. As to the date of his return? A. Yes, sir.

Q. And did nothing particular draw your attention to it at that time?

A. Oh, only the fact that at that time they were holding a jubilee here. We had three days session of the Fourth of July, and Mr. Christy came in on the evening of the 3d, and Sunday was the Fourth and then they celebrated again Monday, being the 5th.

Q. Now, those dates are all from memory?

A. Yes, sir; that's all.

Q. Did you know anything about the date of the maturity of the certificate of sale in the S. J. Rich mortgage? A. No, sir. [135]

Q. You didn't know anything about that at all?

A. No, sir.

Q. That's all.

Mr. HANSBROUGH.—It is hereby stipulated and agreed by the parties to this action that T. H. Christy had no other security than the 331 acres of land for his mortgage, except the 400 acres of land

(Testimony of Thomas H. Hill.)

that was foreclosed by Standrod & Company, which has been sold under their mortgage, and the date of redemption has expired, and 8,000 or 12,000 shares of stock in The Crystal Springs Investment Company, which is valueless.

Mr. HANSBROUGH.—The defendants rest.
[136]

Examiner's Certificate to Testimony.

United States of America, for the
District of Idaho,
Southern Division.

I, Daniel Hamer, Special Examiner, do hereby certify that the witnesses T. H. *Crhsity*, W. J. D'Arcy Charles L. Hart, Charles A. Hickenlooper, W. A. Hickenlooper, Thomas H. Hill, and John Walker, were by me duly sworn to testify the truth, the whole truth and nothing but the truth; that their said testimony was taken at the office of Messrs. Hansbrough & Gagon, Blackfoot, Idaho, on the 11th day of March, 1911, pursuant to an order of Court heretofore entered herein and by agreement of the respective parties, through their attorneys of record, by me, in shorthand, and that the above and foregoing is a full, true and correct transcript of the testimony of said witnesses as taken by me; that said parties were personally present and represented by their respective counsel, as set forth; and that I am not counsel for or related to any of the parties to said cause, nor otherwise interested in the event of the suit.

IN TESTIMONY WHEREOF, I have hereunto set my hand, this 15th day of March, 1911.

DANIEL HAMER,

Special Examiner.

[Endorsed]: Filed March 16, 1911. A. L. Richardson, Clerk. [137]

In the Circuit Court of the United States, Ninth Circuit, District of Idaho.

IN EQUITY—No. —.

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

Assignment of Errors.

Charles A. Hickenlooper, the above-named complainant and appellant, hereby assigns errors in the order and decree of the Circuit Court of the United States for the District of Idaho, in the above-entitled cause, dated the 8th day of July, 1911, in the following particulars:

1. Because the said United States Circuit Court in and for the said District of Idaho, erred in refusing to enter judgment against the defendants and in favor of the complainants for the sum of \$2,012.76,

with interest as demanded in the bill of complaint.

2. Because the said Court erred in refusing to subrogate complainant to all of the rights of the said S. J. Rich under the note and mortgage attached as Exhibits "A" and "H" to the bill of complaint, and to reinstate and foreclose said mortgage to satisfy a judgment in favor of the said complainant.

3. Because the Court erred in denying complainant a prior lien upon the real estate described in the bill of complaint to secure payment of the money advanced by him for the purpose of protecting the title to said property from the maturity of the certificate of sale referred to in the bill of complaint.

[138]

4. Because the Court erred in rendering judgment against the complainant and in favor of the defendants, dismissing the complainant's bill of complaint and rendering judgment in favor of the defendants for costs.

J. D. SKEEN,

Solicitor and of Counsel for Complainant.

Dated, August —, 1911.

[Endorsed]: Filed August 14, 1911. A. L. Richardson, Clerk. [139]

In the Circuit Court of the United States, Ninth Circuit, District of Idaho.

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

Petition on Appeal.

To the Honorable FRANK S. DIETRICH, District Judge, and Judge of the Above-named Court, Presiding Therein:

The above-named complainant in the above-entitled cause, conceiving himself aggrieved by the order and decree made and entered by the above-named court in the above-entitled cause, under date of July 8th, 1911, denying the complainant relief demanded by the bill of complaint, and dismissing said cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the said Ninth Circuit, at

San Francisco, California.

Dated this 12th day of August, 1911.

J. D. SKEEN,

Solicitor and of Counsel for Complainant. [140]

The foregoing Petition on Appeal is granted and the claim of appeal therein made duly allowed. The bond on appeal is hereby fixed at \$500.00.

Dated, August 14, 1911.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: Filed Aug. 14, 1911. A. L. Richardson, Clerk. [141]

In the Circuit Court of the United States, Ninth Circuit, District of Idaho.

IN EQUITY—No. 139.

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, Charles A. Hickenlooper, as principal, and C. M. Clay and James M. White, as sureties, are held and firmly bound to T. H. Christy, The Crystal Springs Investment Company, Limited, a corpora-

tion, and W. J. D'Arcy, receiver of the said The Crystal Springs Investment Company, Limited, in the full and just sum of \$500.00, to be paid to the said defendants above named, their attorneys, executors, administrators or assigns, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

SEALED with our seals and dated, this 16th day of August, 1911.

WHEREAS, lately, at the Circuit Court of the United States for the District of Idaho, in a suit depending in said Court between the said Charles A. Hickenlooper, complainant and the said T. H. Christy, The Crystal Springs Investment Company, Limited, a corporation, and W. J. D'Arcy, receiver of the said The Crystal Springs Investment Company, Limited, defendants, a decree was rendered against the said Charles A. Hickenlooper [142] and the said Charles A. Hickenlooper having obtained an appeal and filed a copy thereof in the clerk's office of the said Court, to reverse the decree in the aforesaid suit, and a citation directing the said defendants, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, within thirty days from the date thereof,

NOW THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that

If the said Charles A. Hickenlooper shall prosecute his appeal with effect and answer all damages and costs if he fail to make his said appeal good,

then the above obligation to be void; otherwise to remain in full force and virtue.

C. A. HICKENLOOPER.

C. M. CLAY.

JAMES M. WHITE.

State of Utah,

County of Weber,—ss.

C. M. Clay and James M. White being severally duly sworn, each for himself says: That he is worth the sum specified in the foregoing undertaking as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt by law.

C. M. CLAY.

JAMES M. WHITE.

Subscribed and sworn to before me, this 16th day of August, 1911.

[Seal]

W. R. SKEEN,

Notary Public.

My commission expires July 18, 1913. [143]

The sufficiency of the foregoing bond on appeal is approved as to form and sureties.

_____,
Judge.

[Endorsed]: Approved. Dietrich, Judge. Filed Sept. 5, 1911. A. L. Richardson, Clerk. [144]

In the Circuit Court of the United States, Ninth Circuit, District of Idaho.

CHARLES A. HICKENLOOPER,
Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,
Defendants.

Citation.

United States of America,—ss.

The President of the United States to the Defendants T. H. Christy, The Crystal Springs Investment Company, Limited, a Corporation, and W. J. D'Arcy, Receiver of the Said The Crystal Springs Investment Company, Limited, and to George F. Hansbrough and George F. Gagon, Their Attorneys, Greeting:

YOU ARE HEREBY CITED AND ADMONISHED TO BE AND APPEAR at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States for the District of Idaho, wherein Charles A. Hickenlooper is complainant and you are defendants, to show cause, if any there be, why the judgment in the said

appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States of America, this 5th day of September, A. D. 1911, and of the Independence of the United States the one hundred and thirty-sixth.

FRANK S. DIETRICH,

United States District Judge presiding in the Circuit Court.

[Seal]

A. L. RICHARDSON,

Clerk. [145]

Service of the foregoing citation is accepted, this 6th day of September, 1911.

HANSBROUGH & GAGAN,

Solicitors for Defendants T. H. Christy, The Crystal Springs Investment Company, Limited, a Corporation, and W. J. D'Arcy, Receiver of the said The Crystal Springs Investment Company, Limited. [146]

[Endorsed]: Original. No. 139. U. S. Circuit Court, Eastern Division, District of Idaho. Charles A. Hickenlooper, Plaintiff, vs. T. H. Christy et al., Defendants. Citation. Filed Sept. 8, 1911. A. L. Richardson, Clerk. [147]

Return to Record.

And thereupon it is ordered by the Court that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relat-

ing, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal]

Attest: A. L. RICHARDSON,

Clerk. [148]

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Idaho.

CHARLES A. HICKENLOOPER,

Complainant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCOY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Defendants.

Clerk's Certificate.

I, A. L. Richardson, Clerk of the Circuit Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 149, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above-entitled cause, and that the same together constitute the transcript of record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$70.20, and that the same has been paid by the appellant.

Witness my hand and the seal of said Court this
8th day of September, 1911.

[Seal]

A. L. RICHARDSON,

Clerk. [149]

[Endorsed]: No. 2054. United States Circuit
Court of Appeals for the Ninth Circuit. Charles
A. Hickenlooper, Appellant, vs. T. H. Christy, The
Crystal Springs Investment Company, Limited, a
Corporation, and W. J. D'Arcy, Receiver of the Said
The Crystal Springs Investment Company, Limited,
a Corporation, Appellees. Transcript of Record.
Upon Appeal from the United States Circuit Court
for the District of Idaho.

Filed October 11, 1911.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,

Deputy Clerk.

[Order Enlarging Time to Docket Cause.]

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

CHARLES A. HICKENLOOPER,

Appellant,

vs.

T. H. CHRISTY, THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED (a Corporation), and W. J. D'ARCY, Receiver of the Said THE CRYSTAL SPRINGS INVESTMENT COMPANY, LIMITED,

Respondents.

Upon application of counsel for complainant, and for good cause shown;

It is ordered that the time to file the record and docket said cause in the U. S. Circuit Court of Appeals be and the same is hereby enlarged and extended from the 5th day of October, 1911, to and including the 15th day of October, 1911.

Dated Oct. 5, 1911.

FRANK S. DIETRICH,

Judge.

[Endorsed]: No. 2054. In the United States Circuit Court of Appeals for the Ninth Circuit. Charles A. Hickenlooper, Appellant, vs. T. H. Christy, The Crystal Springs Investment Company, Limited, a Corporation and W. J. D'Arcy, Receiver of the said The Crystal Springs Investment Company, Limited, Respondents. Order. Filed Oct. 9, 1911. F. D. Monckton, Clerk. Refiled Oct. 1, 1911. F. D. Monckton, Clerk.